

**McGrath State Beach Area
Berry Petroleum Oil Spill, December 1993**

**Draft Restoration Plan
and Environmental Assessment**



August 2004

Prepared by:

California Department of Parks and Recreation
California Department of Fish and Game
United States Fish and Wildlife Service

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Table of Contents

LIST OF FIGURES AND TABLES	4
EXECUTIVE SUMMARY	5
1.0 INTRODUCTION	7
1.1 Purpose	8
1.2 Authority	9
1.3 Oil Spill and Injuries	9
1.4 Consent Decree	9
2.0 AFFECTED ENVIRONMENT	10
2.1 Physical Environment	11
2.2 Biological Environment	12
2.3 Special Status Species	13
3.0 RESOURCE INJURIES	15
4.0 RESTORATION PLANNING	16
4.1 Background	16
4.2 Restoration Constraints	17
4.3 Criteria for Evaluating Restoration Alternatives	19
4.3.1 Threshold Criteria	19
4.3.2 Additional Criteria	19
5.0 RESTORATION ALTERNATIVES AND ANALYSIS	20
5.1 No Action Alternative	21
5.2 Land Acquisition/Conservation Easements	21
5.3 Habitat Enhancement	22
5.3.1 Early Restoration Actions	23

5.3.1.A—Riparian Corridor Interim Stabilization	23
5.3.1.B—Arundo Control	24
5.3.2 Sand Dune Enhancement	25
5.3.2.A—Sand Dune Enhancement - Power Plant to Lake Outfall	27
5.3.2.B—Sand Dune Enhancement – Lake Outfall to Natural Preserve	27
5.3.2.C—Mixed Dune Scrub Enhancement – McGrath Lake to Harbor Blvd	28
5.3.3 Mandalay Beach Habitat Enhancement	29
5.4 Public Information and Education	30
5.4.1 Interpretive Signs	30
5.4.2 McGrath State Beach Visitor Center Relocation	31
5.4.3 Outreach and Recovery Coordinator	32
6.0 ENVIRONMENTAL COMPLIANCE AND CONSIDERATIONS	33
6.1 NEPA-CEQA Compliance	33
6.2 Adverse Effects	34
6.3 Beneficial Effects	35
6.4 Cumulative Effects	35
7.0 TENTATIVE PREFERRED ALTERNATIVES	35
8.0 RESTORATION PLAN IMPLEMENTATION	36
8.1 Process and Timeframe	36
8.2 Responsibilities	37
APPENDICES	38
A. List of Preparers and Persons Consulted	38
B. Consent Decree	38
C. Memorandum of Understanding	38

LIST OF FIGURES AND TABLES

FIGURES

- Figure 1 McGrath State Beach and Vicinity
- Figure 2 Plant Communities of McGrath State Beach
- Figure 3 Geographic Area of Potential Restoration Projects
- Figure 4 Land Acquisition and Conservation Easement Opportunities
- Figure 5 Arundo Treatment Area Map
- Figure 6 Habitat Enhancement Zones

TABLES

- Table 1 Tentative Preferred Alternatives

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EXECUTIVE SUMMARY

On December 24, 1993, a pipeline owned and operated by Berry Petroleum Company (Berry) ruptured causing the discharge of approximately 2,075 barrels of crude oil (the Spill) in the vicinity of McGrath Lake in Ventura County, California. Release of the crude oil resulted in petroleum contamination along a pathway that extended from the pipeline rupture, along a riparian corridor and adjacent wooded areas, into McGrath Lake, through a diversion pipeline into a slough that traverses the dunes and beach, into the Pacific Ocean and onto approximately seven (7) miles of sandy beach. Cleanup of the beach, dunes, lake, and riparian corridor included removal and/or disturbance of oiled and un-oiled terrestrial and aquatic vegetation; debris; sand; soil; and sediments using heavy equipment and hand tools.

The California Department of Fish and Game, the California Department of Parks and Recreation, and the U.S. Fish and Wildlife Service, are the Trustees for the natural resources injured by the Spill (Trustees). As authorized by federal and state law, an injury assessment was conducted by the Trustees to determine the damages to natural resources resulting from the Spill. The Trustees determined that petroleum contamination and cleanup activities resulted in injuries to birds, fish, invertebrates, vegetation and habitats within riparian, lake/wetland and modified sand dune plant communities in and around McGrath Lake, and McGrath State Beach, Ventura County, California.

The United States and the State of California reached a settlement with Berry regarding natural resource damages and penalties. The terms of the settlement are memorialized in a Consent Decree which was entered by the United States District Court on January 23, 1997. The settlement required Berry to place \$1,315,000 in a trust account to fund restoration projects that will restore, rehabilitate, replace or acquire the equivalent of the injured, lost, damaged, or destroyed natural resource and/or affected services resulting from the Oil Spill.

Pursuant to a Memorandum of Understanding signed by the Trustees, the McGrath Trustee Council composed of Trustee representatives was formed. Under the authority of both the California Lempert-Keene-Seastrand Oil Spill Prevention and Response Act and the federal Oil Pollution Act of 1990, the McGrath Trustee Council has the sole responsibility to develop a Restoration Plan, secure public input, adopt a Final Restoration Plan, and provide implementation oversight for the successful completion of all restoration actions/projects.

Public comment and agency input will be solicited through circulation of the draft Restoration Plan and Environmental Assessment (Plan/EA) and at a public meeting to be held by the Trustee Council. The restoration alternatives (projects) presented in the draft Plan/EA include: land acquisition (fee title/conservation easements), habitat enhancement/restoration, and public information/education projects. Habitat enhancement/restoration projects are contemplated that include invasive species control, natural recovery, monitoring, and adaptive management in various geographic areas (zones).

Environmental review of the final Restoration Plan (Plan) will be conducted pursuant to the California Environmental Quality Act (CEQA) and National Environmental Policy Act (NEPA) prior to adoption of the final Plan by the Trustee Council. Additional environmental review may be required at a project level prior to implementation of some individual restoration alternatives.

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1.0 INTRODUCTION

1.1 Purpose

The purpose of this draft Restoration Plan and Environmental Assessment (Plan/EA) is to inform the public about the affected environment, natural resource injuries, and restoration actions proposed to compensate for the injuries resulting from the McGrath State Beach Area Berry Petroleum Oil Spill. The Plan/EA also provides a framework for evaluating the proposed restoration alternatives, including consideration of potential environmental impacts.

Public review of this draft Plan/EA is an integral component of the restoration planning process. The Trustee Council is interested in receiving public input and comment on the draft Restoration Plan and Environmental Assessment as a whole, and/or on the restoration alternatives and environmental review presented. The public is also invited to present ideas or proposals for projects that have not previously been considered.

Comments on the draft Restoration Plan/Environmental Assessment will be accepted for a period of 45 days from August 21, 2004 through October 4, 2004. Comments must be received in writing by 5:00 pm on October 4, 2004, to be considered part of the official record. Comments may be e-mailed to vwatt@parks.ca.gov or sent to the California Department of Parks and Recreation, Channel Coast District, 911 San Pedro Street, Ventura, CA 93001, Attention: Valerie Watt. The comments received will be used to modify the Plan/EA where appropriate, to evaluate the potential for significant environmental impacts, and to assist the Trustee Council in the final selection of appropriate projects that can be successfully implemented.

The Trustee Council will hold an open house to familiarize the public with the Restoration Plan and Environmental Assessment, answer questions, and receive written or verbal comments. Only written comments will become part of the official record. The open house will be held:

**Wednesday September 8, 2004
6:30 pm to 8:00 pm**

Presentation by the Trustee Council 7:00-7:30 pm

**at California State Parks
Channel Coast District Conference Room
911 San Pedro Street, Ventura**

The Channel Coast District office is located within San Buenaventura State Beach. Enter the State Beach at the intersection of San Pedro Street and Pierpont Boulevard. No parking fee will be charged to those attending the meeting.

1.2 Authority

The restoration is being conducted under the authority of the Lempert-Keene-Seastrand Oil Spill Prevention Response Act (California Government Code 8670.1 et seq.) and the federal Oil Pollution Act of 1990 (33 U.S.C. 2701 et seq.). A goal of both acts is to require responsible parties to compensate the public for injuries to natural resources resulting from an oil spill and to make the environment and the public whole again. This goal is achieved through implementation of restoration actions that restore, rehabilitate, replace or acquire the equivalent of the injured natural resources or services provided by the injured resources. Restoration alternatives must comply with all applicable laws and regulations, which include the federal and state Endangered Species Acts, the federal Clean Water Act, the federal Migratory Bird Act, the National Environmental Policy Act (NEPA), the California Environmental Quality Act (CEQA), the federal Coastal Zone Management Act, the California Coastal Act, and others.

1.3 Oil Spill and Injuries

On December 24, 1993, a pipeline owned and operated by Berry Petroleum Company within the West Montalvo Field, an onshore oil production facility in and near Oxnard, California, ruptured causing the discharge of approximately 2,075 barrels of crude oil. The spilled oil resulted in petroleum contamination along a pathway that extended from the pipeline rupture into and along a riparian corridor and adjacent wooded area and into McGrath Lake. Oil was then pumped along with water from the Lake through a diversion pipeline into a slough that traverses a portion of the dunes and beach and finally into the Pacific Ocean. Approximately 7 miles of sandy beach were impacted. Some oil was documented at the mouth of the Santa Clara River Estuary. Cleanup of the beach, dunes, lake, and riparian corridor included the removal of surface oil, debris, contaminated soil and sediments, oiled vegetation and other vegetation, using heavy equipment and hand tools.

As authorized by federal and state law, a natural resources injury assessment was conducted by the Trustees to evaluate the damages to natural resources resulting from the Oil Spill. It was determined that petroleum contamination and cleanup activities resulted in injuries to vegetation and wildlife within riparian, lake/wetland, marine shoreline, and modified sand dune areas. Wildlife injured by the Spill included birds, amphibians, fish, invertebrates, and other valuable resources. The federally endangered California brown pelican and western snowy plover were among the special status species affected.

1.4 Consent Decree

A Consent Decree, entered by the U.S. District Court on January 23, 1997, settled the civil action brought by a number of state and federal agencies against the Responsible Party. The Consent Decree required that the responsible party place \$1,315,000 into a trust account to fund restoration projects. The McGrath Trustee Council (also referred to as the Trustee Council) was formed to oversee restoration planning and implementation. The Trustee Council is comprised of designated representatives from the California Department of Parks and Recreation (CDPR), California Department of Fish and Game (CDFG) and the United States Fish and Wildlife Service (USFWS). The California Department of Parks and Recreation is the lead administrative agency for the Trustee Council.

The Trustee Council is responsible for developing and implementing a Restoration Plan to restore natural resources injured by the Spill and with the subsequent oversight and monitoring of restoration activities to ensure successful completion of the restoration projects. The Trustee Council is also responsible for ensuring that the settlement funds are spent in accordance with the Consent Decree, the Memorandum of Understanding (MOU) entered into by the Trustees in connection with the McGrath Lake Oil Spill, and with applicable state and federal laws.

The settlement funds were placed in a trust account (McGrath Lake Trust) established by the National Fish and Wildlife Foundation (Foundation), which administers the funds on behalf of the Trustee Council. The Foundation enters into contracts and makes payments as directed by the Trustee Council. The funds placed in the McGrath Trust are to be used for the design, implementation, permitting, monitoring and oversight of restoration projects that address water quality improvement of McGrath Lake, habitat improvements, revegetation, and/or protection of natural areas in and around McGrath State Beach. "Restoration" is defined in the Consent Decree (Appendix B) as, "Any action to restore to its pre-Spill condition any Natural Resource injured, lost, or destroyed as a result of the December 1993 Oil Discharge and the services provided by that Natural Resource, or any action which restores, replaces, rehabilitates or acquires the equivalent of the injured, lost or destroyed Natural Resource and affected services."

The projects proposed in this draft Restoration Plan are consistent with projects contained in the Restoration Scoping Document incorporated in the MOU (Appendix C) and authorized by the Consent Decree. Restoration projects that are contemplated provide for the protection of affected resources through:

- land acquisition (fee title or conservation easements)
- habitat enhancement (increase native vegetation through exotic species control with natural recovery, seeding and/or planting)
- public information and education (interpretive signs, visitor center relocation, outreach coordinator)

To the extent that on-site restoration is not feasible, the Trustee Council will fund off-site restoration projects that benefit the same or similar resources. The Trustee Council retains the authority to implement other projects deemed reasonable and necessary, in accordance with the established evaluation criteria.

2.0 AFFECTED ENVIRONMENT

Information in this section is derived primarily from the McGrath State Beach Natural Resources Management Plan, prepared for the California Department of Parks and Recreation by Environmental Science Associates (April 2003).

2.1 Physical Environment

McGrath State Beach is located along the Pacific Ocean on the Oxnard Plain, at the mouth of the Santa Clara River (see Figure 1). The park unit consists of 316 acres of river estuary, beach, sand dunes, inland salt flats, riparian woodlands and a back-dune coastal lake (McGrath Lake). Developed facilities include campgrounds, day use parking, maintenance yard, employee residences, visitor center and sanitary dump station. Adjacent to the park are oil and gas extraction facilities, a power generating station, wastewater treatment plant and public road. Agricultural fields lie to the east, with the Pacific Ocean to the west.

The terrain of McGrath State Beach is relatively level and low-lying. The ocean shoreline extends in a north/south direction, bordered by a moderately sloping beach that varies seasonally. The larger summer beach, approximately 100-200 feet wide, narrows in the winter. A ridge of sand dunes separates the beach from both the campgrounds and McGrath Lake. These foredunes vary in height, rarely exceeding 26 feet above sea level.

The hydrological characteristics of the area most significantly define the local ecosystems within McGrath State Beach. The dominant surface feature is the Santa Clara River, which drains a watershed of approximately 1,600 square miles. Within the park unit, the Santa Clara River Estuary has been designated a Natural Preserve, affording recognition and protection of this rare and valuable resource. Historically the estuary spread over a wide coastal delta, extending from McGrath Lake on the south through present-day Ventura Harbor on the north and several miles inland. Over the past century, growth and development in the flood plain have reduced the river to a narrow channel. Today, flood control levees restrict meander patterns and flood flows. Overland flows from the river to McGrath Lake have been virtually eliminated. As a result, McGrath Lake now receives surface runoff from a sub-watershed of around 1,500 acres of primarily agricultural land.

Groundwater in the McGrath Lake sub-watershed is found at two distinct elevations. The deep aquifer (below 200 feet) has little direct influence on local habitats, while a shallow, perched aquifer exerts significant influence. The shallow groundwater is associated with an underlying clay or clay/sand layer that prevents surface infiltration from seeping to lower elevations. This shallow water table is generally found four to eight feet below the ground surface, at an average elevation of three to four feet mean sea level. McGrath Lake represents an elevation low point where this shallow groundwater is exposed, forming a back-dune coastal lake.

The hydrology of McGrath Lake has been modified over the past century to meet the needs of agricultural development. In addition to flood control levees, surface and underground drainage systems have been constructed in the sub-watershed to facilitate crop production. Decades of agricultural drainage to the lake has negatively affected water and sediment quality and increased sedimentation (see also Section 4.0). Water elevation in the lake is also artificially controlled to protect adjacent farmlands. A pump-pipeline system is currently used to convey lake water to the dunes/beach, where it ponds or flows to the ocean.

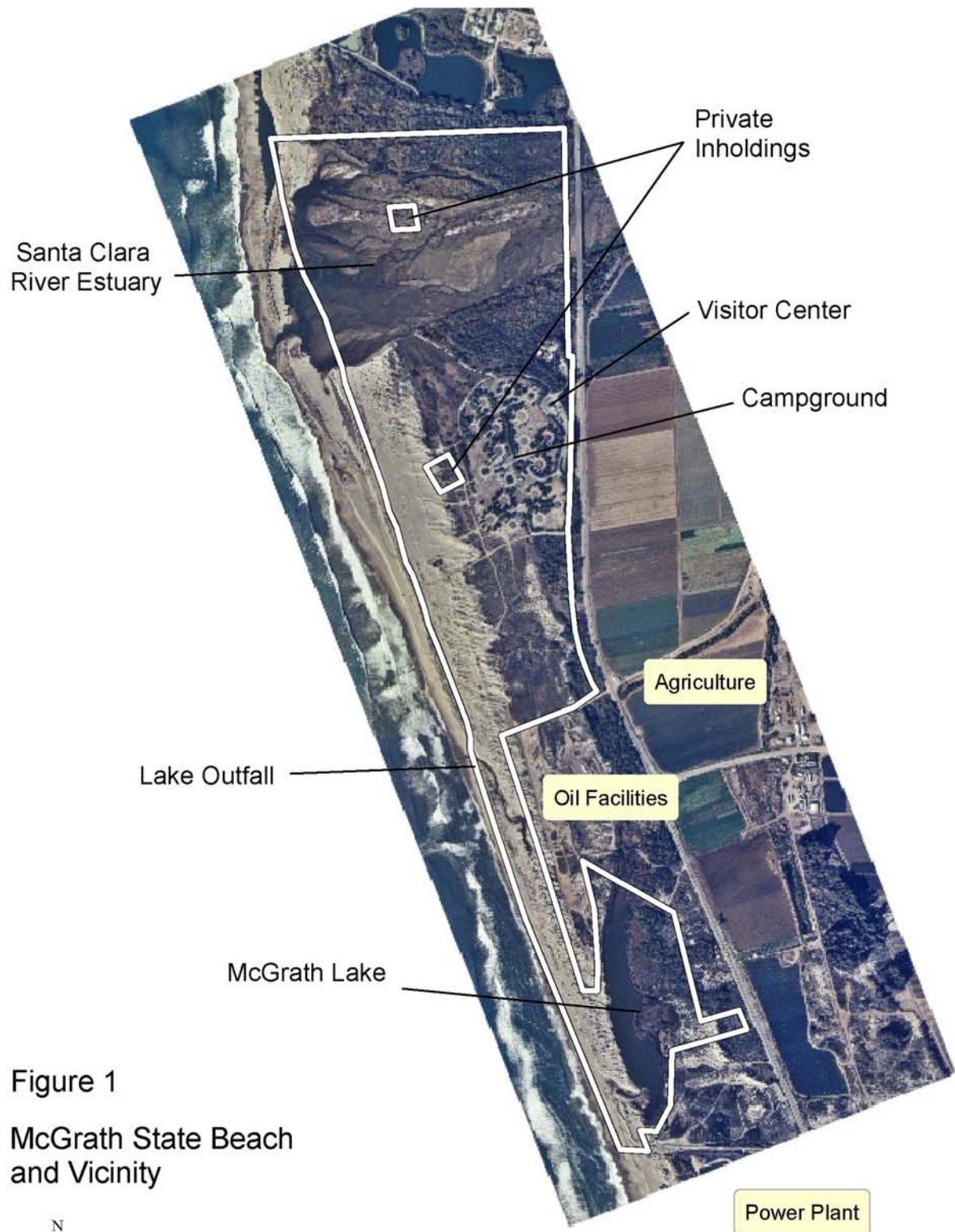
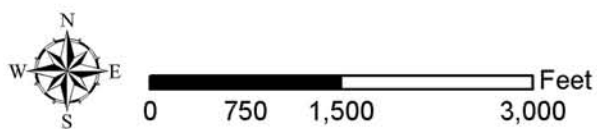


Figure 1

McGrath State Beach
and Vicinity



2.2 Biological Environment

McGrath State Beach is uniquely situated at the intersection of nine important habitats. These habitats include the Pacific Ocean, sandy beach, coastal dunes, Santa Clara River and estuary, coastal back-dune lake (McGrath Lake), riparian woodland, freshwater marsh, and brackish marsh. While each of these habitats is individually noteworthy, the convergence of such a variety of habitats within one area creates the added values of high biological diversity and species richness.

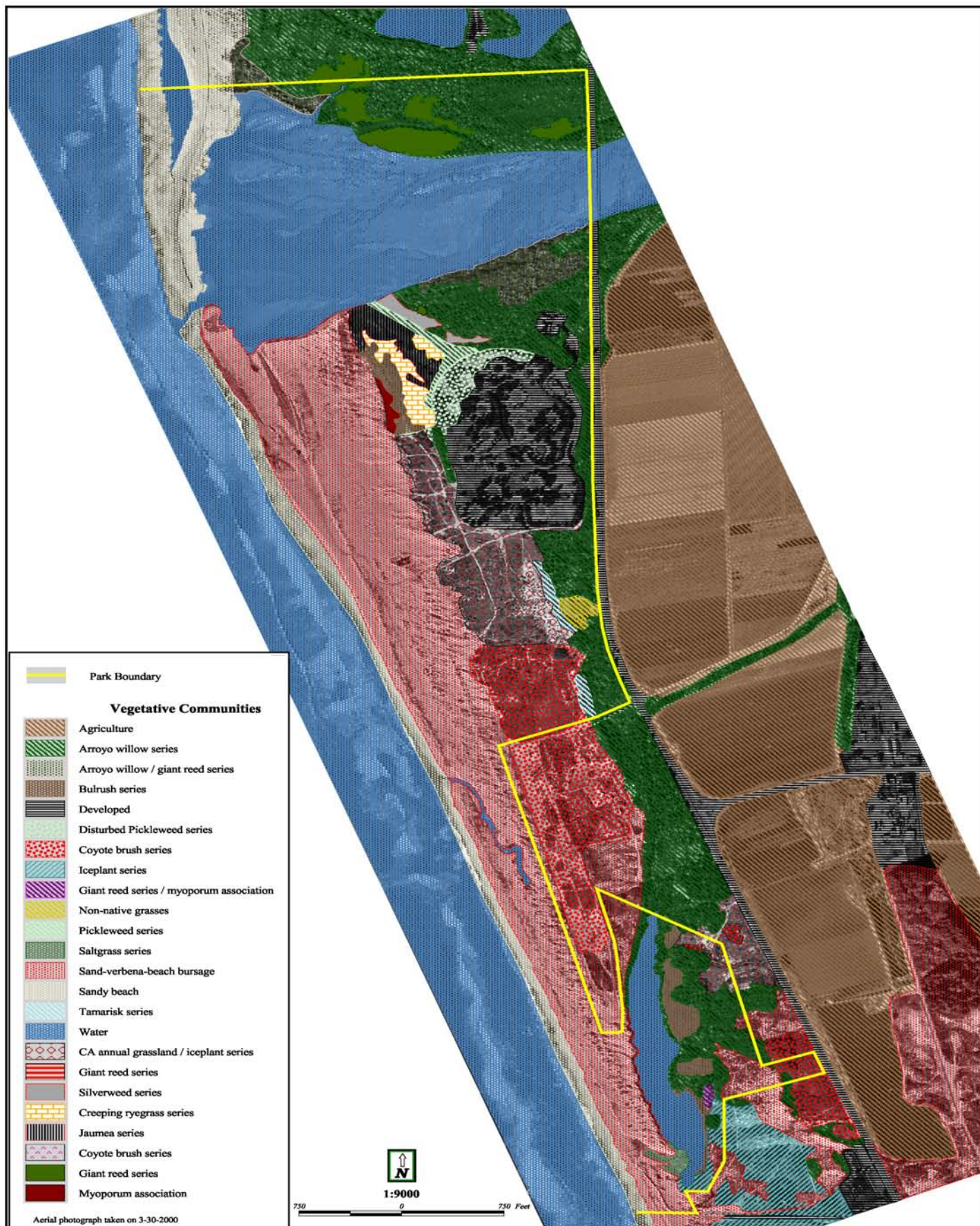
Habitats are not distinct features that can be considered in isolation from each other. More common wildlife species, such as red-shouldered hawk (*Buteo lineatus*), great-horned owl (*Bubo virginianus*), northern flicker (*Colaptes auratus*), racoon (*Procyon lotor*), and western toad (*Bufo boreas*), frequently use more than one habitat type. They may use riparian habitat for breeding, resting, and thermal cover or cover while moving from one area to another, and range into upland scrub or over open water to forage. Frequently it is at the edges of habitats, where they transition from one type to another, that the greatest number of these more common wildlife species will be found.



Above: Coastal dune, fresh emergent marsh & willow riparian habitats converge at McGrath Lake

Within McGrath State Beach, the following native habitats are found in the McGrath Lake area (see Figure 2—Vegetative Communities).

Riparian woodland—This wetland habitat, found north and east of the Lake, is composed of a dense willow canopy dominated by arroyo willow (*Salix lasiolepis*) in association with red willow (*S. laevigata*). Areas with tree canopy and mixed scrub are common that include coyote brush (*Baccharis pilularis*), mulefat (*Baccharis salisifolia*) and poison oak (*Toxicodendron diversilobum*). Non-native giant reed (*Arundo donax*), Myoporum (*Myoporum laetum*) and tamarisk (*Tamarix* spp.) are also found. Many species of wildlife use this habitat type for movement corridors, foraging, cover and breeding. Native riparian habitats have been recognized as the most important habitat for terrestrial bird species such as the endangered least Bell's vireo.



SOURCE: CA Dept of Parks and Recreation, 2001 and ESA 2002.

FIGURE 2
Plant Communities of McGrath State Beach

Fresh emergent marsh—This wetland habitat occurs along the edge of McGrath Lake and along the riparian corridor that flows into the Lake. It is dominated by hardstem bulrush (*Scirpus acutus*) and common tule (*Scirpus californicus*) in association with lesser components of spiny rush (*Juncus acutus*), creeping ryegrass (*Leymus triticoides*), cattail (*Typha sp.*), saltgrass (*Distichlis spicata*) and yerba mansa (*Anemopsis californica*). This habitat provides important cover and nest or nursery sites for aquatic-associated amphibians and other wildlife species such as waterfowl and muskrat.

Lacustrine—Lacustrine habitat consists of open water, which is bordered by fresh emergent marsh or arroyo willow plant communities. The open water habitat of McGrath Lake supports aquatic species of fish (*Gambusia spp.*) and invertebrates and provides foraging and bathing opportunities for both local and migratory freshwater and marine bird species, including the endangered California least tern (*Sterna antillarum browni*) and California brown pelican (*Pelecanus occidentalis*).

Coastal dune—This habitat includes active coastal foredunes along with the more stable interior back dunes and dune swale. Perennial forbs, low shrubs and grasses form either open or continuous canopy in these areas. Associated species include sand verbena (*Abronia spp.*), beach bur (*Ambrosia chamissonis*) beach evening primrose (*Camissonia cheiranthifolia*), coyote brush (*Baccharis pilularis*), coast buckwheat (*Eriogonum parvifolium*), mock heather (*Ericameria ericoides*) and saltgrass (*Distichlis spicata*). Non-native iceplant (*Carpobrotus edulis*, *C. chilensis*, *Mesembryanthemum crystallinum*) is pervasive in some areas. Wildlife utilize the dune habitat for forage, nesting, cover, and thermal cover. Among wildlife dependent on coastal dune habitats are the special status silvery legless lizard (*Aniella pulchra ssp. pulchra*), California least tern and western snowy plover.

Marine— The marine habitat extends from the upper limit of the unvegetated, sandy shoreline seaward to the open ocean. The intertidal zone extends from the area exposed at the lowest low tides through the zone influenced by salt spray. This intertidal zone provides foraging opportunities for shorebirds, including the threatened western snowy plover, and habitat for marine invertebrates including shellfish.

2.3 Special Status Species

“Special status” species are defined as those species that are listed, or are candidates for listing, as endangered or threatened by the U.S. Fish and Wildlife Service (USFWS) or California Department of Fish and Game (CDFG). Special status species that are known to occur or may occur in the McGrath Lake area include the following:

California brown pelican (*Pelecanus occidentalis*)—Federal endangered, State fully protected. California brown pelicans utilize McGrath Lake for bathing and resting. Large numbers also use the Santa Clara River Estuary for roosting and bathing.

Western snowy plover (*Charadrius alexandrinus nivosus*)—Federal threatened, State endangered and fully protected. This species nests and forages in intertidal and foredune habitats at McGrath State Beach, including the beach and dunes west of McGrath Lake.



California least tern (*Sterna antillarum browni*)—Federal endangered, State fully protected. California least terns nest on the foredunes throughout McGrath State Beach, including the dunes immediately west of McGrath Lake. This species has been observed foraging in McGrath Lake

Above: California least tern foraging at McGrath Lake

Other special status species that potentially may have been impacted include the following:

Least Bell's vireo (*Vireo bellii pusillus*)—Federal endangered, critical habitat. Pairs of least Bell's vireo have been observed in riparian habitat adjacent of the Santa Clara River Estuary. Potential habitat is found in the Riparian Corridor northwest of McGrath Lake.

Long-billed curlew (*Numenius Americanus*)—State special concern. The intertidal marine shore provides foraging habitat for this species at McGrath State Beach.

Northern harrier (*Circus cyaneus*)—State special concern. These raptors nest on the ground in shrubby vegetation, often at the edge of a marsh or in wetland areas. Both foraging and nesting habitats are found in the McGrath Lake area.

Silvery legless lizard (*Anniella pulchra pulchra*)—State special concern. This species has been recorded in Ventura and potential habitat occurs in much of McGrath State Beach, especially in the riparian area at the mouth of the Santa Clara River and near McGrath Lake.

White-tailed kite (*Elanus leucurus*)—State fully protected. The riparian areas near McGrath Lake provide potential nesting habitat, and upland areas provide potential foraging habitat.

3.0 RESOURCE INJURIES

As authorized by federal and state law, a damage assessment was conducted by the Trustees following the Spill to determine the injuries to natural resources resulting from the Spill. The Trustees determined that petroleum contamination and cleanup activities resulted in injuries to birds, fish, invertebrates, and vegetation within riparian, lake/wetland and modified sand dune areas.

Lake/Wetlands: McGrath Lake was heavily oiled during the Spill, contaminating the surface waters, the water column and bottom sediments. Wildlife, including vertebrates and invertebrates, and plants were adversely affected by the oil.

Riparian Corridor: The creek flowing into McGrath Lake and adjacent wooded area were heavily oiled during the Spill. Native riparian vegetation, including but not limited to mature willows, were removed during cleanup. Various types of birds and mammals as well as insects and other invertebrates were killed or otherwise adversely affected.

Modified Sand Dunes: Portions of the sand dunes were oiled during the Spill, and heavy foot and vehicle traffic during the response effort altered dune structures and vegetation.



Above: Heavy vehicle traffic during the response effort altered dune structures and vegetation

At the time of the settlement, the Trustee agencies developed a Restoration Scoping Document to assist the Trustee Council in its restoration planning efforts. The Restoration Scoping Document summarizes the documented and quantified natural resource impacts as follows.

Habitat Impacts:

- Contamination of Lake sediments
- Contamination of waters in both fresh and marine environments
- Loss of nesting, forage, and protective habitat by removal of vegetation to aid clean-up response.

Bird Impacts:

- « Direct deaths (166 carcasses; actual mortality is estimated to be at least 20% higher)
- Interim loss of habitat use during response and cleanup
- Apparent loss of one breeding season (Beach is used by Least Tern, Snowy Plover, Avocet and other shore birds for nesting.)
- Reduced food availability
- Altered migratory patterns caused by Spill and response activities that were expected to persist 2-3 years
- Adverse change in portions of coastal strand/dune habitat structure, including loss of plant cover, for endangered Snowy Plover
- Adverse change in riparian habitat for songbirds

Fish Impacts:

- Expected decline in lake population numbers of finfish (e.g., Gambusia)

Invertebrate Impacts:

- Expected decline in lake population numbers of snails and crayfish
- Petroleum contamination of marine shellfish and possible decline in local population numbers

Vegetation Impacts:

- » Measured loss of riparian vegetation along creek corridors (e.g., 20+year old willows)
- Expected short-term loss of lakeside vegetation (sedges, rushes, grasses and some aquatic plants)
- Expected impacts to dune vegetation caused by disturbances to native plants and potential invasion by exotic species

Other types of injuries were expected, based on the observations in case studies from other Spill incidents, but were not documented prior to reaching a settlement.

4.0 RESTORATION PLANNING

4.1 Background

Prior to undertaking the development of a draft restoration plan, the Trustee Council gathered and solicited information on the natural resources of the area. A broad range of experts was consulted with at a Forum in January 1998. The purpose of the Forum was to provide the Trustees with a greater understanding of the natural resources of the area, including the importance of unique and special resources. The following spring, a plant inventory was conducted by a multi-agency group of experts. A compendium of data related to wildlife was also prepared by the California Department of Fish and Game.

4.2 Restoration Constraints

During this period several constraints to restoration options were identified. The Trustee Council collaborated with other public agencies and private landowners in order to clarify or resolve those constraints before proceeding with the publication of a draft Restoration Plan.

Lake Water Level

When McGrath State Beach was purchased by the State for use as a public beach/park in 1961, the prior owners retained the right to deposit agricultural drainage into McGrath Lake and to maintain lake levels within a specified range to protect adjacent farmland from crop damage. The lake level is maintained in part by pumping water from the north end of the lake through a pipeline to the dunes/beach and into the ocean. During storm events, when the pumps were insufficient to keep up with inflows and maintain the lake level, the dunes were mechanically breached during low tide to drain lake water directly to the beach/ocean and prevent flooding of nearby farmlands.

The Trustees recognized that continuation of this practice could interfere with dune restoration alternatives. In August 1998, a meeting focusing on water level and flood season management of the Lake was held with all property owners and representative of agencies having an interest or regulatory responsibilities. Subsequent meetings were held with Coastal Commission and Los Angeles Regional Water Quality Control Board (RWQCB) staffs. A final recommendation was not made, pending completion of a watershed-level planning effort.

Water and Sediment Quality

In the spring of 1998 the RWQCB, in partnership with the Trustee Council, funded a study of water and sediment in McGrath Lake. The study investigated residual oil along with metals, nutrients, pesticides, and toxicity in water and sediment. The lake characterization study (Biological and Chemical Measurements of Sediment Quality in McGrath Lake) was completed in February 1999. The study found that PAH (Polynuclear Aromatic Hydrocarbon) compounds/residuals from the Oil Spill were not evident in significant levels to register concern. However, the study did reveal that high levels of "historic" chlorinated pesticides, PCBs, heavy metals, and other toxic substances were present in lake sediments.

In June 1999, in part due to the findings of this study, the State Water Resources Control Board placed McGrath Lake in the State's Consolidated Toxic Hot Spots Cleanup Plan as a high priority site. High toxicity of Lake sediments, apparently due to agricultural runoff, was the critical concern supporting this placement. It was the clear opinion of all experts that no restoration actions should take place to encourage use or improve lake habitat values until appropriate corrective actions were taken. Such actions included assessment and, if needed, clean-up of agricultural runoff flowing into the Lake and removal or remediation of contaminated Lake sediments.

Watershed Evaluation and Planning Process

In the Fall of 1999, due to the number of constraints limiting restoration alternatives, the Trustee Council chose to delay publication of a draft Restoration Plan while it engaged in a collaborative process with property owners and agencies who were involved with the McGrath Lake

Watershed. The purpose of this process was to develop and implement a comprehensive water/sediment clean-up and natural resources restoration program within the McGrath Lake Watershed that would integrate the following three components:

- Development of a watershed plan to address water and sediment quality of McGrath Lake and inflows to the Lake, and development of an approach and Plans & Specifications for cleanup/remediation of contaminated Lake sediments. This action would also include activities to secure funding for implementation.
- Natural system restoration planning and development of a Restoration Plan for the habitats impacted by the McGrath Oil Spill.
- Integrated implementation of the Watershed Plan, Lake sediment clean-up/remediation project, and natural system restoration projects/Restoration Plan.

The McGrath Lake Watershed Action Committee was convened in March 2001 to address issues of watershed system health and function and sustainable business practices. The Committee included property owner and public agency representatives. Members shared information and participated in studies to increase mutual understanding of the watershed system health and function and sustainable business practices. Working collaboratively, committee members identified Best Management Practices (BMPs) in the eastern watershed to improve water quality at McGrath Lake and secured grant funding to offset a portion of the implementation costs. These BMP implementation actions began in 2003, with completion anticipated in 2005.

With funding provided by the RWQCB, the Trustee Council also partnered with the United States Army Corps of Engineers (Army Corps) to produce a McGrath Lake Watershed Management Study, which is on-going at this time. The original scope of the study included:

- Assess current hydrology in the watershed
- Assess erosion/sedimentation in the watershed
- Identify on-going contamination, if any
- Design a suite of appropriate BMPs to mitigate any ongoing contamination
- Identify target clean-up/remediation levels for lake sediments
- Develop plans & specifications for BMP implementation and lake sediment cleanup/remediation, and
- Complete permitting for implementation

Due to funding limitations, the scope of the McGrath Lake Watershed Study was subsequently limited to an assessment of current hydrology, erosion/sedimentation and water quality in the watershed.

The Trustee Council also worked with state and federal agency representatives to identify and secure funding for a lake sediment cleanup/remediation project. Due to the high cost of sediment cleanup/remediation, no funding for such a project has been identified. The Trustee Council is therefore moving ahead with the Restoration Plan at this time, based on the expectation that no

lake sediment cleanup/remediation project will occur over the next decade that would potentially disrupt any habitat enhancement projects in areas adjacent to McGrath Lake.

McGrath Beach Pathogen TMDL

An additional constraint for restoration alternatives is the potential effect of the RWQCB's McGrath Beach Coliform TMDL (Total Maximum Daily Loads) on lake/watershed system function. A December 2002 draft RWQCB staff report (Total Maximum Daily Loads for Santa Clara River Estuary Beach/Surfer's Knoll, McGrath State Beach, and Mandalay Beach Coliform and Beach Closures) identified the discharge of water from McGrath Lake to the ocean as a significant source of high levels of total coliform bacteria in the ocean along McGrath Beach. In July 2003, the RWQCB issued a Cleanup and Abatement Order (No. R4-2003-0065) that requires a reduction in total coliforms discharged from McGrath Lake to the beach/ocean in order to meet ocean water quality standards. This reduction might be accomplished by reducing the concentration of total coliform bacteria in the discharged water, and/or by reducing the volume of water discharged. A resolution of the issue has yet to be identified. The Trustee Council has committed to implementing restoration alternatives that will be successful regardless of potential changes in lake hydrology that may result from resolution of the TMDL.

4.3 Criteria for Evaluating Restoration Alternatives

The Trustee Council developed two categories of criteria for the evaluation of restoration alternatives, the first being "threshold" criteria and the second "additional" criteria. The criteria were developed based on state and federal laws and guidelines, including the Oil Pollution Act regulations. Restoration alternatives must achieve a minimum level of acceptance on the threshold criteria in order to receive further consideration under the additional criteria. The Trustee Council used the evaluation criteria listed below to consider the restoration project alternatives presented in this draft Plan. The criteria are not ranked in any order of priority.

4.3.1 Threshold Criteria

- Nexus to Injured Resources – Restoration efforts must be directed at projects that restore, rehabilitate, replace, enhance or acquire the equivalent of the resources and services impacted by the Spill.
- Feasibility - Based on past experience or studies, the restoration projects must be technically and procedurally sound.
- Public Health and Safety – The possibility that a proposed alternative would create a threat to the health and safety of the public will be part of the evaluation process.
- Legality - The projects must comply with all applicable laws

4.3.2 Additional Criteria

- Degree of Nexus – The Trustees will evaluate the strength of the nexus between a restoration alternative and the injured natural resource to be restored. Projects with a stronger nexus are preferred.

- No Duplicate or Replacement Funding - The Trustees will not fund projects that are to be funded or accomplished by other means or should be funded by more appropriate sources.
- Likelihood of Success – Projects will be evaluated for their potential for success, including the level of expected return of natural resources and/or resource services. Performance criteria of projects will have to be clear and measurable.
- Cost Effectiveness – The projects will be evaluated by considering the relationship of expected project costs to the expected resource/service benefits from each project alternative.
- Multiple Resource Benefits – Benefits can be increased if proposed projects benefit more than one natural resource or resource service.
- Duration of Benefits – Long-term benefits are the objective of the restoration projects, and the Trustees will evaluate project alternatives according to their expected duration of benefits.
- Likelihood of Adverse Impacts – Evaluation of projects will include examination of potential adverse impacts on the environment and the associated natural resources.
- Opportunities for Collaboration – Cost effectiveness can be enhanced by matching funds, in-kind services, or volunteer assistance as well as coordination with on-going or proposed projects.
- Total Cost and Accuracy of Estimate-The Trustees will evaluate the estimated total cost of each project alternative and the validity of the estimate. The total cost estimate should include costs to design, implement, monitor, and manage the alternative. The validity of cost estimates are evaluated based on the completeness, accuracy, and the reliability of methods used to estimate costs, as well as the credentials of the person or entity submitting the cost estimate to accurately estimate costs.
- Comprehensive Range of Projects- The Trustees will evaluate the extent to which a project contributes to a more comprehensive restoration package. Proposed project alternatives are evaluated for the degree to which it benefits any uncompensated Spill injuries.

5.0 RESTORATION ALTERNATIVES AND ANALYSIS

Geographic Area: The McGrath State Beach Area Trustee Council has identified the geographic area of highest priority for potential restoration activities as the area most immediately impacted by the Oil Spill. That area is bounded by the Pacific Ocean to the west, Harbor Boulevard to the east, the power plant to the south, and the north bank of the Santa Clara River to the north (see Figure 3). This area includes properties owned by the State of California and the McGrath Family Trust.

The Trustee Council has committed to identifying projects that will deliver long-term improvements and protection of resources within this specific area. To the extent that funds



remain following restoration within this area, the Trustee Council will fund off-site restoration projects that benefit the same or similar resources as those injured by the Spill.

Habitat Categories: At the time of the settlement, the Trustee agencies developed a Restoration Scoping Document to assist the Trustee Council in restoration planning efforts. Besides documenting and quantifying natural resource injuries, the document identifies three habitat categories (lake/wetland, riparian/wetland, modified sand dunes) and potential restoration activities within those categories to restore the types of resources injured by the Spill. The following alternatives include restoration actions that address injuries to biota associated with these three habitat categories. The alternatives are not ranked in any order of priority.

5.1 No Action Alternative

Under the "no action" alternative, restoration or rehabilitation of injured resources would occur solely through natural recovery. No additional actions would be taken to restore, rehabilitate, or acquire the equivalent of any of the natural resources and/or services injured, lost, damaged or destroyed by the Oil Spill. This alternative provides no benefits to the injured resources or to the public. Additionally, the settlement requires active restoration of the injured natural resources.

5.2 Land Acquisition/Conservation Easements

Nexus: The Oil Spill caused injuries to natural resources on both public and private lands in the McGrath State Beach area (see Figure 4). For example, the Riparian/Wetland Corridor and the north end of McGrath Lake, both of which were heavily oiled, are held in private ownership. Likewise, the main staging area for the Oil Spill cleanup, located within the Modified Sand Dunes, was on private land that is leased for oil and gas development.

Need: Land acquisition, through fee title or conservation easements, could enhance and/or protect resources injured by the Oil Spill in one or more of the following ways:

- Allow for “seamless” habitat enhancement/restoration across public-private property boundaries
- Protect quality habitats on private land from degradation or loss due to future land development
- Allow for future restoration of degraded/developed habitats on now private lands
- Provide a buffer around McGrath Lake to protect sensitive species

Seamless Habitat Enhancement—The complex ‘patchwork’ of public and private properties in the Oil Spill area complicates implementation of habitat enhancement projects on public lands in a manner that addresses habitat units as a whole, regardless of public/private property boundaries. Because habitats extend across property boundaries, an exotics plant control project on public land, for example, would be less effective if new sources of invasive species are left on adjacent private property. Obtaining conservation easements or fee title land acquisition over adjoining habitats could facilitate enhancement and long-term protection of habitat units that overlap property lines, thereby increasing habitat values and the likelihood of project success.

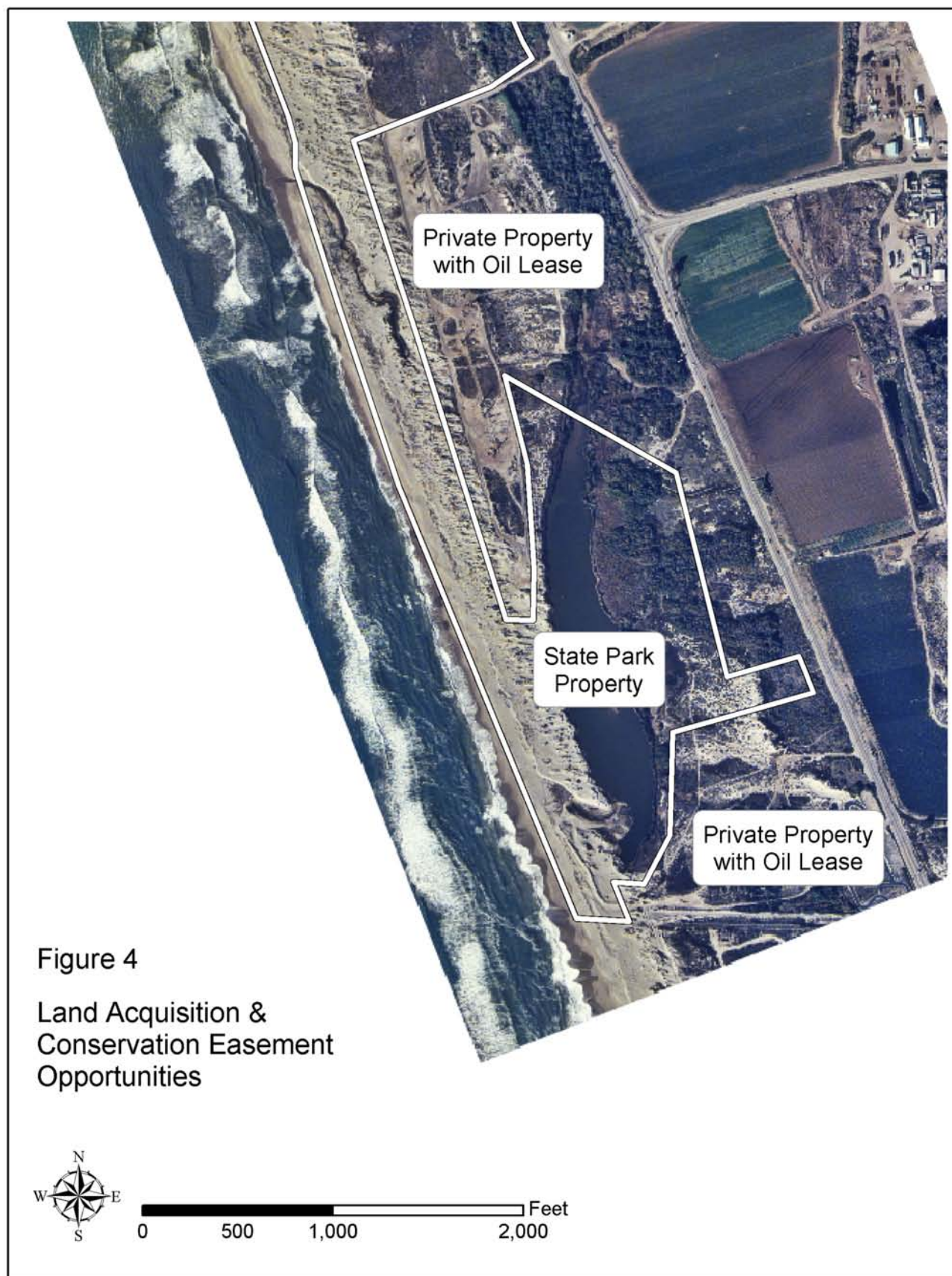


Figure 4

Land Acquisition &
Conservation Easement
Opportunities

Protect Quality Habitats—Patches of quality Riparian/Wetland, Lake/Wetland and Sand Dune habitats exist on private lands in the McGrath Lake area. Acquisition of these habitats (fee title or conservation easements) would eliminate the threat of degradation or loss due to future land development.

Future Restoration—While some areas within these private lands contain high quality habitats, decades of industrial and agricultural activities have, in other areas, significantly modified and degraded these habitats. Because of this, opportunities exist to restore and/or enhance existing Riparian/Wetland, Lake/Wetland and Sand Dune habitats on lands now privately owned. Such restoration and/or enhancement could benefit both plant and wildlife species that were directly or indirectly impacted by the Oil Spill.

McGrath Lake Buffer—Human activities on lands adjacent to the Lake have the potential to disrupt sensitive wildlife species using the Lake area. Land acquisition (fee title or conservation easements) could create a buffer around the Lake to protect these sensitive species.

Project Description: This project would seek to acquire fee title or conservation easements over private properties containing, or with the potential to sustain, Sand Dune, Lake/Wetland, and/or Riparian/Wetland habitats. Any acquisition would be placed in public ownership by conveyance to the State, with management and stewardship responsibilities delegated to CDPR. CDPR would develop a plan for long-term management and protection of the natural resources.

Lands considered for acquisition must meet the following criteria:

- Located within or adjacent to the McGrath State Beach Area (Figure 3), and
- Have a willing seller.

Property currently under lease would be considered for acquisition if: lease activities do not significantly interfere with current resource values; resource values will increase once lease activities cease; or the potential exists for habitat enhancement/restoration following expiration of lease activities.

The total allocation for land acquisition is an estimated \$500,000. Opportunities to leverage trust funds through public or private partnerships will also be considered. If no acquisition takes place, the Trustee Council will direct trust funds reserved for potential acquisition to alternative restoration actions. (See also: Section 8.0 Restoration Plan Implementation.)

Evaluation Criteria: The feasibility of achieving resource protection and/or enhancement goals will vary based upon the availability of suitable acquisition opportunities; the cost of restoration; and the long-term costs for monitoring, maintenance, and enforcement.

5.3 Habitat Enhancement

Lake Habitat Enhancement: When the RWQCB and Trustee Council conducted a limited investigation of sediment and water in the Lake in 1998, no residual oil contamination was found

in Lake sediment samples. However, other types of sediment and water contamination were found which have the potential for negatively impacting wildlife and aquatic species. Because contamination and other issues affecting the lake (lacustrine) habitat remain unresolved, the Trustee Council will not be considering habitat enhancement actions within the open water lake or lake bottom habitat at this time. If cleanup/remediation efforts were to occur in the near future that would potentially improve water and sediment quality in the lake, the Trustee Council reserves the option to consider alternatives for lake habitat enhancement at that time, should settlement funds remain. (See Section 4.2 for further discussion.)

5.3.1 Early Restoration Actions

Two habitat enhancement/restoration projects—Riparian corridor interim stabilization and *Arundo donax* (giant reed) control—were implemented early in the restoration planning process.

5.3.1.A—Riparian Corridor Interim Stabilization

A requirement was placed on the Trustee Council in the Consent Decree to reimburse Berry Petroleum Company for reasonable costs related to an Interim Stabilization Project within the riparian/wetland corridor that was impacted by the Spill. This project was required by the California Coastal Commission (Coastal Commission) as a condition of the Coastal Development Permit issued for the Oil Spill response.



Above: Oiled vegetation and soil were removed along riparian/woodland corridor during cleanup operations, leaving “clearing” in wooded area north of Lake.

Need/Nexus: During the Spill, oil contaminated the riparian corridor/woodland north of

McGrath Lake. Oiled vegetation and oiled soil in the area were removed during cleanup. Many mature willows were also cut/removed to provide response personnel access to the waterway for oil cleanup.

Project Description: Revegetation of a 1,000 square feet area within the riparian corridor was required as a special permit condition by the Coastal Commission. An Interim Site Stabilization Plan (Plan) was submitted and approved which called for establishing approximately 450 arroyo willow (*Salix lasiolepis*) and red willow (*S. laevigata*) cuttings on 2-3 foot centers, along with provisions for a drip irrigation system, monitoring and adaptive management. Performance criteria identified a minimum survivorship of 70% after one year for project success. Success was achieved thirteen months after planting was initiated. The cost of the project was \$60,868.51.

Evaluation Criteria: This project was required by the California Coastal Commission and was mandated in the Consent Decree. Project evaluation criteria were therefore not applied by the Trustee Council.

5.3.1.B—Arundo Control

Removal of giant reed (*Arundo donax*) from riparian, wetland and dune habitats was initiated by the Trustee Council as an early restoration project in October 1998, following a public participation process and environmental clearance. This project included a cost sharing component with neighboring Coastal Berry Company for removal of giant reed (*Arundo*) from riparian habitat within the riparian corridor under a Streambed Alteration Agreement issued by the CDFG. This cooperative activity was pursued because one key to a successful *Arundo* eradication program involves addressing the spread of the plant throughout the watershed.

Need: The McGrath State Beach Natural Resources Management Plan (April 2003) identifies invasion by non-native species as a leading source of habitat degradation within the park. *Arundo* is an invasive non-native plant that decreases the amount and quality of native habitats and degrades ecosystem function by replacing native plant species. At the time of the Oil Spill, stands of *Arundo* were established on the eastern shore of McGrath Lake, in the riparian/wetland corridor north of the lake, and within the sand dunes and beach west of the lake.

Nexus: *Arundo* removal/control was implemented around McGrath Lake in beach/dune and riparian/wetland habitats that were directly impacted by, or proximal to, the Oil Spill.

Project Description: This project included the initial removal and follow-up treatment of *Arundo* at several sites within the riparian corridor, beach/dunes and wetlands around McGrath Lake (see Figure 5). Over 1,000 cubic yards of *Arundo* was initially removed from several sites covering a total area of approximately two acres. The initial project included development of an exotics removal/control plan, permitting, contractor management/oversight, restoration monitoring and reporting. *Arundo* removal was accomplished by cutting with hand tools and painting the cut stumps with an herbicide approved for use in aquatic ecosystems. The cut *Arundo* was removed by hand and disposed of off-site at an approved facility. Measures to protect breeding birds, including the California least tern and western snowy plover, were also included. An annual monitoring/maintenance program has remained in place to insure the

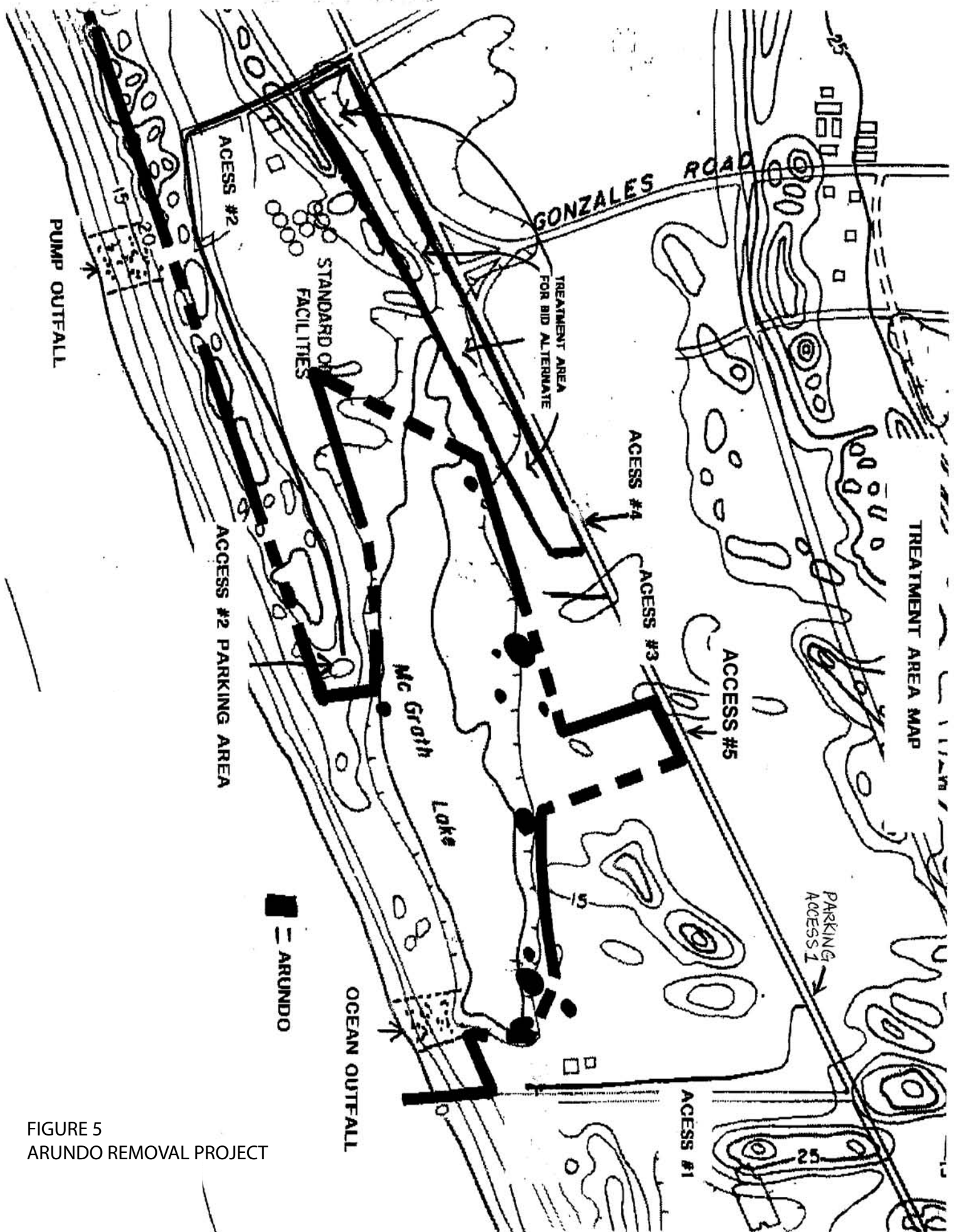


FIGURE 5
ARUNDO REMOVAL PROJECT

success of this project. The combined cost for removal and control of Arundo over the six-year period 1998 through 2003 is \$132,976.

Evaluation Criteria: Removal of this exotic species was recognized by the Trustee Council as the most immediate restoration opportunity. The project offered a strong nexus to the injured resources, benefited multiple types of natural resources, and offered a long duration of benefits. Based on the documented experience from other Arundo removal projects, this project was determined to be technically feasible with a high likelihood of success. The opportunity to collaborate with private landowners increased the benefits to the natural resources, the likelihood of success (by addressing upstream sources) and the cost effectiveness of the project.

5.3.2 Sand Dune Enhancement

Need: The dunes system within McGrath State Beach is part of a larger relict coastal dunes complex that extends from the Ventura River mouth on the north to West Fifth Street in Oxnard on the south. As one of the few dynamic, functioning, dune-building systems remaining in southern California, this dune system represents a significant natural resource both locally and from a statewide perspective.

In the McGrath Lake area, these coastal dunes contain invasive, exotic plant species that reduce the potential of the area to support native plants and wildlife. The removal or control of these invasive non-natives would improve the quality, function, and diversity of the dune ecosystem. In some areas, signage and fencing would aid in reducing disturbance to dune structures and vegetation caused by undirected visitor use.

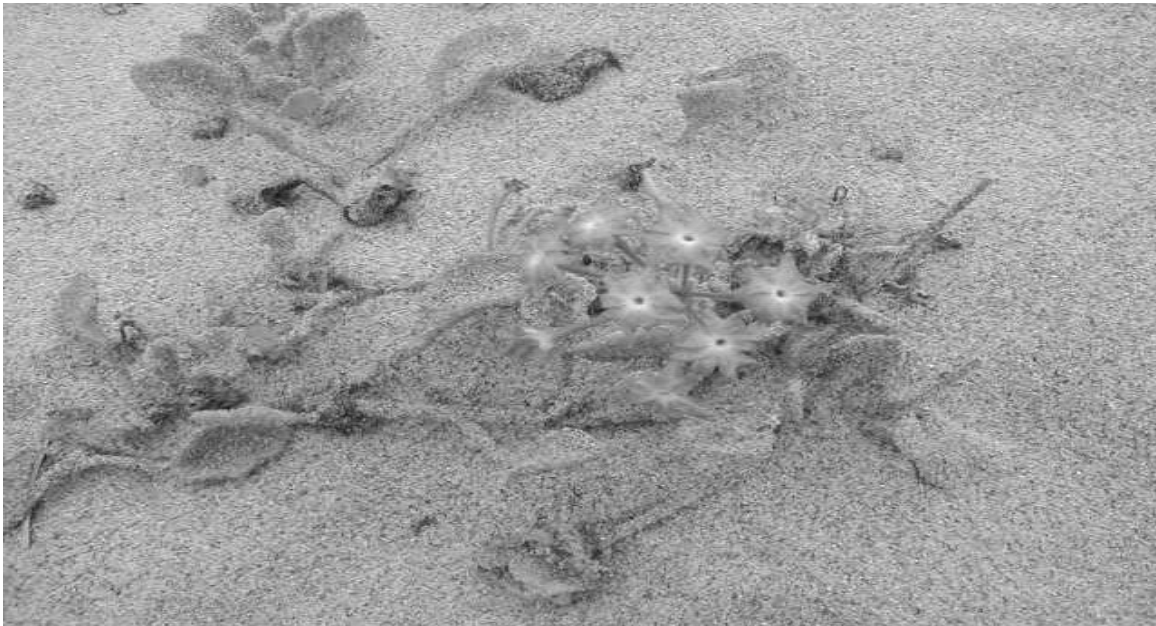
Nexus: The dunes north and west of McGrath Lake were directly impacted by the Oil Spill and cleanup response. Many species of vertebrate and invertebrate wildlife that were directly impacted by the Spill also range off-site, and utilize adjacent dune habitats.



Above: Sand dunes northwest of McGrath Lake. (Ice plant & sand verbena in foreground, Lake outfall discharge in background.)

Project Description: The proposed habitat enhancement/restoration projects seek to enhance habitat values first through exotic plant control (to reduce non-native plant species coverage) followed by natural recovery. Where indicated, native plant seeding and/or planting will also be used to increase native species coverage in order to meet success criteria. Protection of restored areas will be achieved using signage, fencing and/or predator control, as needed.

To facilitate project implementation, Sand Dune enhancement projects will be divided into three geographic zones: A, B and C. (See Figure 6.) Within each zone, dune enhancement projects will be accomplished through a series of tasks beginning with the development of a project-level enhancement plan. The project-level plan will address project goals and approach; exotics control methods; native species enhancement methods; performance standards and success criteria; scheduling of monitoring, maintenance, and reporting activities; potential corrective actions (adaptive management); and project budget. All monitoring plans shall include the duration and frequency of monitoring, methods of data collection and management, and level of sampling that will be necessary to detect project success. Monitoring data will be utilized to determine appropriate corrective actions to be implemented if project success is not being attained (adaptive management). Corrective actions will be implemented, as needed, until success criteria are met.



Above: Native sand verbena (Abronia umbellata.) in bloom near McGrath Lake

All project-level plans will follow accepted practices and use best available technologies, including digital data management and mapping. Each project-level plan will receive environmental review. All permitting, contract administration and contract management costs will be included in each project budget. The total allocation for all Sand Dune enhancement projects is estimated at \$450,000.

Evaluation Criteria: Portions of the coastal dunes complex in the vicinity of McGrath Lake were directly impacted by the Oil Spill and cleanup response, creating a strong geographic nexus

to Spill injuries. Sand Dune restoration projects that have been successfully implemented at other locations have created a body of knowledge that can be applied to this restoration, thereby providing a high likelihood of success and expectation of cost-effectiveness.

5.3.2.A—Sand Dune Enhancement - Power Plant to Lake Outfall

Boundaries—Power plant (south), Lake pump outfall (north), Pacific ocean/beach (west), Lake shore and private property (east).

Nexus: This section of the coastal dunes complex was directly impacted by the Oil Spill, creating the strongest geographic nexus to Spill injuries.

Project Description:

Exotics control—Removal of iceplant (*Carpobrotus* spp.) & Arundo (*Arundo donax*). May also include cocklebur (*Xanthium strumarium*), castor bean (*Ricinus communis*), Russian thistle (*Salsola tragus*) and/or other species.

Native plant communities—Enhancement of sand verbena (*Abronia* spp.), beach bur (*Ambrosia chamissonis*) beach evening primrose (*Camissonia cheiranthifolia*), saltgrass (*Distichlis spicata*), and/or other species through natural recovery, with additional seeding and/or planting as necessary.

5.3.2.B—Sand Dune Enhancement – Lake Outfall to Natural Preserve

Boundaries—McGrath Lake pump outfall (south), boundary of Santa Clara River Natural Preserve (north), Pacific ocean/beach (west), terminus of sand dunes (east).

Nexus: The portions of the dunes around the lake outfall were directly impacted by the Oil Spill and cleanup activities, providing a strong geographic nexus to Spill injuries. Dunes farther north of the outfall provide the opportunity to restore, rehabilitate, replace or enhance similar resources and resource services within close geographic proximity to the Spill.

Project Description:

Exotic plants—Removal of iceplant (*Carpobrotus* spp.) & Arundo (*Arundo donax*). May also include non-native annual grasses or other species.

Native plant communities—Enhancement of sand verbena (*Abronia* spp.), beach bur (*Ambrosia chamissonis*) beach evening primrose (*Camissonia cheiranthifolia*), and/or other species through natural recovery, with additional seeding and/or planting as necessary.

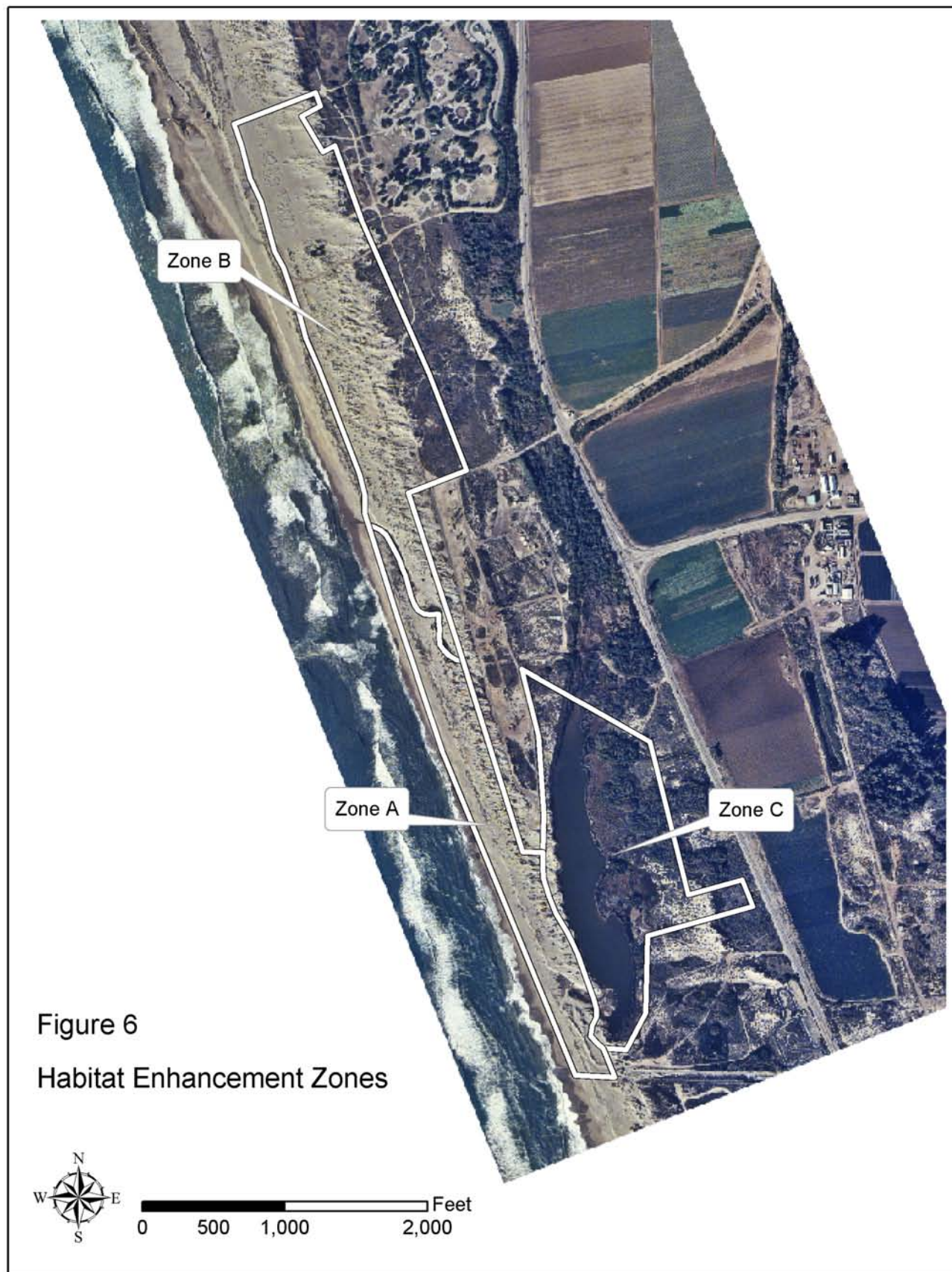


Figure 6
Habitat Enhancement Zones

5.3.2.C—Mixed Dune Scrub Enhancement – McGrath Lake to Harbor Blvd

Boundaries—Private property/power plant (south), private property/oil lease (north), McGrath Lake/foredunes (west), Harbor Boulevard (east).

Nexus/Need: This zone experienced impacts from vehicular and foot traffic during the Oil Spill cleanup response. An unrelated 16 acre wetlands mitigation project is proposed on an adjacent parcel. That project is expected to restore and enhance riparian, wetland, and coastal dune habitats on lands that have been modified (degraded) by oil and gas development. It includes habitat types that are similar in kind, and in close proximity to, those habitats/resources that were directly impacted by the Oil Spill.

Project Description:

Exotics control—Management of iceplant (*Carpobrotus s.*), Arundo (*Arundo donax*) & myoporum (*Myoporum laetum*). May also include cocklebur (*Xanthium strumarium*), tamarisk (*Tamarix ramosissima*) and/or other species.

Native plant communities—Enhancement of sand verbena (*Abronia spp.*), beach bur (*Ambrosia chamissonis*) beach evening primrose (*Camissonia cheiranthifolia*), coyote brush (*Baccharis pilularis*), coast buckwheat (*Eriogonum parvifolium*), mock heather (*Ericameria ericoides*), saltgrass (*Distichlis spicata*) and/or other species.

Evaluation Criteria: This alternative would provide multiple resource benefits (protect/enhance dune, riparian and wetland habitats) and leverage restoration dollars through collaboration and coordination with other restoration projects/programs.



Above: Mixed dune-scrub east of McGrath Lake. Willows in the background border Harbor Boulevard.

If the proposed 16 acre wetlands mitigation project is implemented, habitat enhancement within this zone would complement that project, creating a “seamless” restoration/enhancement unit around the south and east sides of McGrath Lake. The success of that project in rehabilitating/enhancing resources similar to those injured by the Spill would, in turn, “leverage” the cost-effectiveness of trust funds invested within this zone.

5.3.3 Mandalay Beach Habitat Enhancement

Need: Separated from McGrath Lake by power-generating facilities, Mandalay State Beach (Mandalay Beach) is a mile-long park unit bounded on the north by Southern California Edison, on the south by West Fifth Street (residential development), on the east by Harbor Boulevard and on the west by the Pacific Ocean. Additional residential development is proposed on open space lands east of Harbor Boulevard.



Above: Mandalay State Beach, 1/2 mile south of McGrath Lake, preserves sand dune and wetland habitats adjacent to expanding residential development. (Photo copyright 2002-2004 Kenneth & Gabrielle Adelman, California Coastal Records Project, www.californiacoastline.org)

This state park unit includes open beach, coastal foredune, mixed back-dune scrub, and freshwater wetland habitats. The dunes within Mandalay Beach are part of the same coastal dunes complex that extends from the Ventura River mouth in the north through McGrath State Beach to West Fifth Street in Oxnard, where urban development has replaced the dunes system. This coastal dunes complex is notable as one of the few dynamic, functioning, dune-building systems remaining in southern California. Studies indicate that endangered western snowy plover move between the McGrath Lake area dunes and Mandalay Beach. The snowy plovers utilize the beach and dunes at Mandalay for nesting during the spring and summer, and foraging and roosting during the winter.

Opportunities exist for protection and enhancement of both sand dune and wetland habitats at Mandalay Beach. Invasive, non-native European beach grass and ice plant degrade the quality and function of the dunes habitat. The value of these habitats for wildlife can be improved through exotic plant control. Intensive recreational use of the area, due to close proximity to urban development, also creates the opportunity for enhanced resource protection through improved management of public access and visitor education. The recreational pressures on these rare and valuable coastal resources are sure to intensify over time as population growth results in increased public use at this urban interface. Managing and directing this public use for

to protect dune structures, plants and wildlife will, therefore, continue to become an even more critical component of resource protection.

The County of Ventura manages Mandalay State Beach under an operating agreement with the State of California. Due to fiscal constraints, funds for resource protection at the unit are limited. Given the current tide of funding for state and local public agencies, these constraints are expected to remain for the foreseeable future.

Nexus: The Oil Spill event impacted seven miles of coastal beach, including Mandalay State Beach. This park unit also contains sand dune and wetland habitats that are the same as or similar to those at McGrath Lake that were directly impacted by the Spill and cleanup response. Since some wildlife resources that were directly impacted by the Oil Spill (such as western snowy plover) move between these two locations, it is likely that some of these same shared resources at Mandalay Beach were directly or indirectly impacted by the Spill.

Project Description: This project would implement habitat enhancement activities at Mandalay State Beach following the same procedures as those outlined in Section 5.3.2, above. Funding for enhancement at this location would depend upon the availability of trust funds remaining after implementation of projects with a stronger geographic nexus to the Oil Spill (McGrath Lake/McGrath State Beach).

Evaluation Criteria: The natural resources at Mandalay State Beach are similar to, and a continuous extension of, the coastal beach, dune, and wetlands habitats that were directly impacted by the McGrath Oil Spill. This project would provide for the protection of these increasingly rare and valuable resources as development pressures and public use increase.

5.4 Public Information and Education

5.4.1 Interpretive Signs

Need/Nexus: Protecting and managing natural ecosystems within an urban context is a complex process. Where human recreation overlaps with sensitive ecosystems, as in the McGrath Lake area, visitor education about their role in protecting these sensitive natural resources becomes critical. Instilling in park users an understanding of and appreciation for the dune, lake and riparian habitats, and the importance of observing and complying with management rules and regulations, are essential to the long-term protection of the natural resources that were injured by the Oil Spill.

For example, the route taken by beach-goers through the sand dunes near McGrath Lake has the potential to impact the structure of the dunes, viability of native plants, and nesting success of sensitive bird species such as western snowy plover and California least terns. The use of designated routes, versus random travel through the dunes and dune habitat enhancement areas, becomes important in protecting these resources. Visitors are more likely to comply with regulatory signs instructing them to use designated routes when they understand and appreciate these sensitive resources and the potential impacts of their actions.

Park visitors entering the McGrath Lake area often walk onto Park property directly from Harbor Boulevard, near the power plant, without passing through the campground or day use areas of McGrath State Beach. There is currently no educational information available to these park visitors. Interpretive signage in this area would serve to increase these users' understanding of and appreciation for the natural resources that were impacted by the Oil Spill, and the visitors' role in protecting these sensitive natural resources.

Project Description: This project consists of the design, construction and installation of interpretive signs to inform and educate the public about the Oil Spill history; natural history and value/importance of the natural resources injured by the Spill; measures taken or needed to manage and protect those resources; and how choices visitors make can affect those resources. The signs would be installed in the McGrath Lake area. Four signs are proposed at an approximate cost of \$5,000 per sign, or \$20,000.

Evaluation Criteria: This project would protect and benefit multiple types of resources that were directly injured by the Oil Spill. Similar projects undertaken in other areas indicate that the project is technically feasible.

5.4.2 McGrath State Beach Visitor Center Relocation

Need/Nexus: The McGrath State Beach Visitor Center serves to inform and educate the public about the natural and cultural resources within the State Beach, including the natural resources injured by the Oil Spill, and about the visitors' role in protecting these natural resources.

The existing Visitor Center (Center) is located in an area that is subject to periodic flooding; has experienced water damage; and is in need of replacement at an alternate site. The Center is now closed pending replacement. A non-profit group associated with the park has offered to provide a new Visitor Center building. Matching funds are needed for site preparation, installation, and utility hookups for the new structure.

Once the Visitor Center is again operational, the building will assist in protecting natural resources injured by the Oil Spill by reducing the potential for conflicts between recreation and natural resources through public education and information.

Project Description: This project would assist state and private partners in replacing and relocating the McGrath State Beach Visitor Center. The new Visitor Center building would be provided by the private, non-profit group, 'Friends of Channel Coast District State Parks'. Funds provided by the McGrath Trustee Council would be used for permitting, site preparation, engineering, building installation, and extension of utilities at an estimated cost of \$50,000.

Evaluation Criteria: This project is technically feasible; would benefit multiple types of resources that were directly and indirectly injured by the Oil Spill; and increases cost-effectiveness through collaboration with other partners.

5.4.3 Outreach and Recovery Coordinator

Need/Nexus: Western snowy plover and California least terns were among the special status species directly impacted by the Oil Spill at McGrath Lake. One of the major causes of decline for western snowy plovers and California least terns throughout Ventura County is the abandonment of nesting sites as a result of intensive human recreational use of beaches.

Since the home range of individual birds that nest in the McGrath Lake area extends to other beaches in Ventura County, a coordinated outreach effort throughout the County would also benefit birds in the McGrath Lake area. A volunteer outreach program that informs and educates recreational beach users in the McGrath Lake area and throughout the county would increase the likelihood of successful breeding and benefit these special status species, while maintaining recreational uses.

Project Description: This project would pool funding and other resources from state and local partners to hire a full-time Ventura County program coordinator to perform or oversee the following activities for a period of three years.

- Docent Program: Recruit and train Volunteers who would educate beach users about tern and plover biology and the importance of respecting protective measures, and would deter predators.
- Infrastructure: Install interpretive signs and annually install and remove temporary fencing.
- Public Outreach: Community outreach to include: consistent signage across beaches in all jurisdictions, guided tours, presentations to interested community groups, news articles, radio PSAs, creation and dissemination of pamphlets and educational materials, tabling at community events, promotion of internships for local college students, and involvement of the Oxnard City Corps.
- Fund Raising: Secure funding for on-going financial support of the program after the initial three-year startup period.

This project is inspired by the success of the Coal Oil Point Reserve (COPR) Snowy Plover Docent Recovery Program in Santa Barbara. In the first years of that program, public education by volunteer docents and the use of symbolic fencing around core habitat areas led to a 90% drop in plover disturbance rates while still allowing for beach recreation. This reduction in disturbance coincided with the return of plover nesting at this location for the first time in 30 years.

The total budget for the three-year period is estimated between \$188,000 and \$218,000, depending upon salary negotiations. Thus far \$100,000 has been pledged to the project by the California Coastal Conservancy. The non-profit California State Parks Foundation is considering additional financial support. In-kind donations of office space and supplies have been offered by the United States Fish and Wildlife Service. This restoration project alternative would provide funding up to a maximum of \$83,000 from the McGrath Trust.

Evaluation Criteria: This project takes advantage of the opportunity for cooperation with other partners (state, local and private) in protecting sensitive resources that were directly and

indirectly injured by the Oil Spill. The project is similar to other restoration projects that have demonstrated a high level of success in other areas.

6.0 ENVIRONMENTAL COMPLIANCE AND CONSIDERATIONS

6.1 NEPA-CEQA Compliance

Environmental review of the Restoration Plan (Plan) will be performed pursuant to the National Environmental Policy Act (42 United States Codes Section 4321 et. seq.) and the California Environmental Quality Act (14 California Code of Regulations Section 1500 et. seq.). As the federal Trustee, the United States Fish and Wildlife Service (USFWS) will be responsible for environmental review and compliance in accordance with NEPA. As a state Trustee and Lead Trustee agency for the Trustee Council, the California Department of Parks and Recreation (CDPR) will be responsible for environmental review and compliance under CEQA.

NEPA—The preparation of a Natural Resources Damage Assessment Restoration Plan in accordance with the federal Oil Pollution Act (OPA) is considered a “major federal action” that requires environmental impact analysis and public review under the National Environmental Policy Act (NEPA). The purpose of NEPA is to encourage productive harmony between man and the environment, promote efforts to prevent or eliminate environmental damage, and enrich the understanding of ecological systems and natural resources.

The Trustees have integrated OPA restoration planning with the NEPA process in preparing this combined draft Restoration Plan and Environmental Assessment (Plan/EA). This integrated document allows the Trustees to combine the public involvement components of both these processes concurrently. Written comments on the draft Plan/EA will be considered in determining the potential for significant impacts. A EIS or FONSI document will then be prepared before a decision is made on the final Restoration Plan. If needed, additional NEPA review will take place at the project level before individual restoration actions/projects are implemented.

CEQA—Similar to its federal counterpart, the California Environmental Quality Act (CEQA) provides a means and process to inform governmental decision-makers and the public about potential significant environmental effects of proposed state/local government actions, and ways to prevent, avoid or reduce potential environmental damage. Public participation and disclosure is a key component of the CEQA process.

After public review of the draft Plan/EA has been completed and incorporated into the final Restoration Plan, the state Lead Agency (CDPR) will prepare appropriate documents for a CEQA determination on the potential for significant environmental impacts. This determination will receive public review in accordance with CEQA guidelines before adoption of the final Restoration Plan (Plan) by the state Trustee agencies. Following adoption of the Plan, individual restoration actions/projects may receive additional project-level review prior to implementation, if needed, as the scope and methodologies for implementation are further defined.

The following is a discussion of the environmental effects that are currently anticipated from implementation of the proposed restoration actions.

6.2 Adverse Effects

Land Acquisition--No significant adverse effects are anticipated in association with land acquisition. The potential effects of any subsequent habitat enhancement/restoration projects on acquired lands would be similar to those described below.

Habitat Enhancement--Control of invasive, non-native plant species in the dune, wetland and/or riparian habitats may be achieved using herbicides, plastic tarps, physical removal (by hand or mechanical means) and/or other techniques. Any of these methods will cause some degree of incidental damage to native plants and wildlife found in close association with the invasive exotics in the treatment area. The degree of damage will vary depending upon site conditions, methods used, season/timing, etc. To a lesser extent, planting, seeding, and/or monitoring activities may also result in incidental disturbance or damage to native species in the treatment area. Temporary restrictions may also be placed on public access to the habitat enhancement areas during the course of the projects that could inconvenience visitors seeking recreational opportunities.

The potential for adverse effects will be addressed in each project-level restoration plan. Adverse effects will be avoided wherever possible. Low-impact techniques and mitigation measures will be incorporated to minimize potential impacts. Such techniques or mitigation measures might include:

- Cut-and-paint vs. foliar spray herbicide application in dense *Arundo* (*Arundo donax*) stands where native plants are commingled;
- Scheduling dune treatment or monitoring activities outside the nesting season for California least tern and western snowy plover;
- Treating and leaving dead iceplant (*Carpobrotus spp.*) in place to reduce erosion potential in the dunes;
- Educating workers to identify and avoid sensitive native species, etc.

By incorporating these and similar low-impact techniques and precautions, any incidental damage to native species is expected to be minor and/or temporary.

Public Education and Information--The installation of interpretive signs in the McGrath Lake area would result in minor ground disturbance in conjunction with installation of the signs. Likewise, the Visitor Center relocation would result in ground disturbance associated with grading, site preparation and utility extension. The installation of temporary fencing around core California least tern and western snowy plover nesting sites, as part of Outreach activities, may result in temporary restrictions to public use and recreation during the breeding season in localized areas of the beach and dunes.

6.3 Beneficial Effects

Land Acquisition—The habitats and associated species on private lands that were directly impacted by the Oil Spill would benefit from the long-term protection afforded by conservation easements and/or the public stewardship associated with fee title land acquisition. Conservation easements or fee title acquisition could: protect existing high-quality habitats from future development; provide opportunities for habitat enhancement/restoration on developed/degraded now held in private ownership; allow for "seamless" habitat enhancement projects on public lands based on contiguous habitat units, rather than public/private property boundaries; and/or provide a buffer around McGrath Lake to minimize disturbance of sensitive species that use the Lake area. The habitats and associated resources on adjacent public lands would also benefit from any reduced development pressures and enhanced habitat values on the adjoining private lands.

Habitat Enhancement—These projects would benefit both plant and wildlife species affected by the Oil Spill by enhancing habitat quality and function. A reduction in exotic species increases the opportunity for native plant communities to expand in coverage and diversity, thereby increasing habitat value and biodiversity. Wildlife that depend on these native plant communities will benefit from the enhanced habitat value. Special status species known to utilize the proposed habitat enhancement areas, that would likely benefit, include the western snowy plover and California least tern.

Public Education and Information—The use of this section of coastline for human recreation brings with it the potential for impacts to the natural resources from recreational activities. Public education and outreach projects would help to protect the natural resources that were injured by the Spill by increasing the public's understanding and appreciation of these unique and valuable resources and how the visitors' individual choices affect these resources. The resources would benefit as visitors to the area increase their compliance with resource protection rules and regulations, and modify their actions/choices to avoid potential conflicts. "On-the-ground" protection measures, such as seasonal fencing of critical nesting areas, are also expected to result in improved reproductive success and contribute to the recovery of populations of western snowy plovers and California least terns that utilize the McGrath Lake area.

6.4 Cumulative Effects

Under NEPA, cumulative environmental impacts are defined as those combined effects on the quality of the human environment that result from the incremental impact of the considered action when added to other past, present, and foreseeable future actions (40 CFR 1508.7). The potential adverse effects that have been identified in conjunction with the proposed actions include minor, incidental damage to native species and temporary, localized access limitations. At this time, no significant cumulative impacts are foreseen from implementation of this suite of restoration actions.

7.0 TENTATIVE PREFERRED ALTERNATIVES

The Trustee Council has identified all of the proposed projects (5.2 through 5.4) as tentative preferred alternatives. The public is invited to review and comment on the tentative preferred projects, which are summarized in Table 1 below, or to propose additional projects that would fulfill the requirements set forth in the Consent Decree (Appendix B). For details regarding the submission of public comments, see Section 1.1.

Table 1. Tentative Preferred Alternatives

Project	Protect Area/Type	Cost (Approximate)
5.2 LAND ACQUISITION Fee Title or Conservation Easements	Riparian/Wetland Sand Dunes Lake/Wetland	\$500,000
5.3 HABITAT ENHANCEMENT		
5.3.1 Early Restoration Projects		
5.3.1.A Riparian Corridor Interim Stabilization	Riparian/Wetland	\$ 60, 869
5.3.1.B Arundo Control	Riparian/Wetland/Dune	\$132,976
5.3.2 Sand Dunes		\$450,000
5.3.2.A Power Plant to Lake Outfall	Sand Dune	
5.3.2.B Lake Outfall to Natural Preserve	Sand Dune	
5.3.2.C Mixed Dune/Scrub	Dune/Riparian/Wetland	
5.3.3 Mandalay Beach Habitat Enhancement		(If trust funds remain)
5.4 PUBLIC INFORMATION/EDUCATION		
5.4.1 Interpretive Signs	Riparn/Dune/Lake/Wetland	\$ 20,000
5.4.2 Visitor Center Relocation	Riparn/Dune/Lake/Wetland	\$ 50,000
5.4.3 Outreach-Recovery Coordinator	Sand Dune	\$ 83,000
	Total	\$1,296,845

8.0 RESTORATION PLAN IMPLEMENTATION

8.1 Process and Timeframe

Following public review of the draft Restoration Plan and Environmental Assessment, the Trustee Council will consider public input and make final changes to the Plan. Environmental review of the final Restoration Plan will then be completed as described in Section 6 above. After completion of the state and federal environmental review processes, the Trustee agencies will adopt a final Restoration Plan.

It is the intent of the Trustee Council to move forward in a timely and progressive manner to implement the approved Restoration Plan (Plan). Habitat enhancement and public information-education projects approved in the final Plan will be implemented as soon as practical. The Trustee Council will explore fee title/conservation easement land acquisition opportunities for one year following adoption of the final Restoration Plan. If no potentially suitable opportunities are pending at the end of this period, the Trustee Council will decide if acquisition opportunities should continue to be explored. If no acquisition takes place, the Trustee Council will redirect trust funds reserved for potential acquisition to habitat enhancement projects.

Habitat restoration will be implemented following the steps outlined in Section 5.3.2, beginning with development of a project-specific enhancement/restoration plan for the first area/zone to be treated. The sequencing of zones has yet to be determined, and will be influenced by many variables. The project enhancement/restoration plan will contain a comprehensive budget that estimates all implementation costs over the life of the project, including maintenance, monitoring, project management, and adaptive management costs.

Once the first project-level plan has been approved and trust funds committed, the process will be repeated for the next area/zone, and so on, until all trust funds have been committed. It is expected that all restoration projects will be initiated within one to five years following final Restoration Plan approval. If, during this period, outside events occur that would address the removal or remediation of Lake water/sediment contaminants, the Trustee Council may reconsider the appropriateness of directing any unencumbered trust funds toward habitat restoration actions within the open-water Lake area.

8.2 Responsibilities

The Trustee Council is responsible for administering and managing all restoration projects through to successful completion. As Lead Trustee for the Trustee Council, CDPR will have lead oversight and project management responsibilities for all implementation.

All unexpended funds will remain in Trust with the National Fish and Wildlife Foundation until directed by the Trustee Council to be expended for a specific project. The Trustee Council has the ability to modify and /or change the projects and/or allocations to assure successful completion of any of the restoration actions and fulfillment of the Trustee Council's obligations under the Consent Decree. If, after all preferred projects are completed, funds remain in the Trust, the Trustee Council will consider additional projects.

APPENDICES

- A. List of Preparers and Persons Consulted**
- B. Consent Decree**
- C. Memorandum of Understanding**

APPENDIX A. List of Preparers and Persons Consulted

Draft Restoration Plan and Environmental Assessment prepared by:

Richard Rojas, Trustee	California Department of Parks and Recreation
Ken Wilson, Trustee	California Department of Fish and Game
Diane Noda, Trustee	United States Fish and Wildlife Service
Denise Steurer, Trustee Alternate	United States Fish and Wildlife Service
Barbara Fosbrink, Trustee Alternate	California Department of Parks and Recreation
Valerie Watt, Project Manager	California Department of Parks and Recreation

Other persons consulted:

Morgan Wehtje, Trustee Alternate	California Department of Fish and Game
Don Lollock	California Department of Fish and Game
Kathy Verrue-Slater	California Department of Fish and Game
Chuck McKinley	United States Fish and Wildlife Service
Mary Meyer	United States Fish and Wildlife Service
Kate Symonds	United States Fish and Wildlife Service

APPENDIX B CONSENT DECREE

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Assistant Attorney General
2 Environment & Natural Resources Division
United States Department of Justice
3 RICHARD L. BEAL
Trial Attorney
4 Environmental Enforcement Section
301 Howard Street, Suite 870
5 San Francisco, California 94105

6 NORA M. MANELLA
United States Attorney
7 Central District of California
LEON W. WEIDMAN
8 Chief, Civil Division
KURT ZIMMERMAN
9 Assistant United States Attorney
Room 7516 Federal Building
10 300 North Los Angeles Street
Los Angeles, California 90012
11 (213) 894-5709

12 Attorneys for Plaintiff, United States of America

13 Listing of Attorneys continues on the Following Page

14 UNITED STATES DISTRICT COURT

15 CENTRAL DISTRICT OF CALIFORNIA

16 UNITED STATES OF AMERICA, and)
THE PEOPLE OF THE STATE OF)
17 CALIFORNIA, the STATE OF)
CALIFORNIA, Acting by and)
18 through the Department of)
Fish and Game, Department of)
19 Parks and Recreation, State)
Lands Commission, California)
20 Regional Water Quality Control)
Board, Los Angeles Region,)

21 Plaintiffs,)

22 v.)

23 BERRY PETROLEUM COMPANY, a)
24 Delaware Corporation, dba)
BUSH OIL COMPANY)

25 Defendant.)
26

Civil Action No 97

- 0427 JSL
(Mc)

CONSENT DECREE

cc: R. Beal 1/23/97

1 DANIEL E. LUNGREN
Attorney General of the State of California

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Assistant Attorney General

3 JENNIFER W. ROSENFELD
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5 (213) 897-2639

6 Attorneys for Plaintiff, the People of the State of California,
the State of California Acting by and Through Department of Fish
7 and Game, Department of Parks and Recreation, California Regional
Water Quality Control Board, Los Angeles Area, and State
8 Lands Commission

9 LAURA K. McAVOY

MARC L. CHARNEY

10 ANTHONY H. TREMBLEY

Nordman, Cormany, Hair & Compton

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Post Office Box 93031-9100

12 Oxnard, California 93031-9100

(805) 485-1000

13 Attorneys for Defendant, Berry Petroleum Company
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1 This Consent Decree ("Decree") is entered into by the
2 United States of America on behalf of the United States
3 Department of the Interior, acting through the United States Fish
4 & Wildlife Service, the United States Department of Commerce,
5 acting through the National Oceanic and Atmospheric
6 Administration, the United States Department of Transportation,
7 acting through the United States Coast Guard, and the United
8 States Environmental Protection Agency (collectively "United
9 States"), the People of the State of California, the State of
10 California acting by and through the California Department of
11 Fish and Game/Office of Oil Spill Prevention and Response
12 ("CDFG/OSPR"), the California Department of Parks and Recreation
13 ("Parks & Recreation"), the California Regional Water Quality
14 Control Board-Los Angeles Region ("Regional Board"), the
15 California State Lands Commission ("State Lands Commission")
16 (collectively "State Agencies") and Berry Petroleum Company, a
17 Delaware corporation ("Berry"). (The United States and the State
18 Agencies shall be, collectively "the Governments").

19 INTRODUCTION

20 This consent decree is intended to encompass claims for
21 response costs, clean-up costs, restoration costs, damages and
22 natural resource damages and civil penalties resulting from
23 rupture of an oil pipeline occurring in Berry's West Montalvo Oil
24 Field Facilities ("Montalvo facilities") in December 1993,
25 creating contamination that resulted in the release and migration
26 of crude oil into the soil and surface waters (collectively
27 "December 1993 Oil Discharge ") in and around McGrath Lake,
28

1 McGrath State Beach, the Santa Clara River Estuary and the
2 Pacific Ocean at McGrath State Beach, in the County of Ventura,
3 State of California ("McGrath Lake Area").

4 Clean-up actions were undertaken by the United States
5 and the State Agencies and by Berry to remove the oil that was
6 discharged as a result of the December 1993 Oil Discharge.
7 Clean-up actions for oil discharged as a result of the December
8 1993 Oil Discharge have been concluded.

9 The Governments have alleged that approximately 2,075
10 barrels of crude oil were discharged and that the discharged oil
11 resulted in petroleum contamination along a pathway that extended
12 from the pipeline rupture, along a riparian corridor and adjacent
13 wood areas, into McGrath Lake, through a diversion pipeline into
14 the slough that traverses a portion of the dunes and beach, and
15 finally into the ocean and onto approximately seven (7) miles of
16 sandy beach.

17 The Governments have alleged that the discharge
18 resulted in injury to lake vegetation, riparian vegetation, dune
19 vegetation, sediments, fish, birds and invertebrates, and other
20 valuable resources, including the federally endangered Brown
21 Pelican, in and about the McGrath Lake Area.

22 The Governments, through their respective Natural
23 Resources Trustees (collectively "the Trustees") have proposed
24 certain Restoration Projects to address Natural Resources Damages
25 that occurred as a direct result of the December 1993 Oil
26 Discharge. The Trustees deem the proposed projects reasonable
27 and necessary measures to restore these Natural Resources.

1 The Parties desire to avoid the costs and risks of
2 litigation and believe that resolution of this dispute without
3 further litigation to be in the best interests of the public.

4 The Parties recognize that this Decree is a settlement
5 of a contested matter. The Decree, the payment, and the
6 acceptance of consideration provided herein do not represent an
7 admission of liability or responsibility by any Party.

8 NOW, THEREFORE, it is hereby ORDERED, ADJUDGED, and
9 DECREED as follows:

10 **JURISDICTION**

11 1. This Court has jurisdiction over the subject
12 matter and over the parties to this action pursuant to 28 U.S.C.
13 §§ 1331, 1345, and 33 U.S.C. §§ 1321, 2717. Venue is proper in
14 this Court pursuant to 28 U.S.C. §§ 1391 and 1395(a); 33 U.S.C.
15 § 1321(b)(7)(E); 33 U.S.C. § 2717(b); and 28 U.S.C. § 1391(b).
16 The Complaint states claims upon which relief may be granted.
17 The Court has supplemental jurisdiction over claims stated in the
18 Complaint pursuant to state law.

19 **PARTIES BOUND**

20 2. This Decree shall apply to and be binding upon and
21 inure to the benefit of the Parties and as applicable, their
22 present and former and future officers, directors, employees,
23 agents, representatives and successors.

24 **DEFINITIONS**

25 3. Whenever the following terms are used in this
26 Decree, they shall have the following meanings:

27 (a) "Natural Resource" and "Natural Resources"

1 mean land, fish, wildlife, biota, air, water, ground water,
2 drinking water supplies, and other such resources belonging to,
3 managed by, held in trust by, appertaining to, or otherwise
4 controlled by the United States and the State Agencies and their
5 respective agencies, departments and subdivisions.

6 (b) "Natural Resource Trustees" or "Trustees"
7 means those federal and state agencies designated or authorized
8 pursuant to the Oil Pollution Act of 1990 and state law to act on
9 behalf of the public as Trustees for the Natural Resources
10 belonging to, managed by, controlled by or appertaining to the
11 United States or State of California. Specifically, as used in
12 this Decree the Trustees are the United States Department of the
13 Interior, acting through the U.S. Fish and Wildlife Service, the
14 California Department of Parks and Recreation and the California
15 Department of Fish and Game, Office of Oil Spill Prevention and
16 Response. Collectively the Trustees herein are the trustees of
17 all of the Natural Resources damaged by the December 1993 Oil
18 Discharge.

19 (c) "Party" or "Parties" mean Berry including its
20 officers, directors, employees, agents, representatives and
21 attorneys; the United States, including its Departments,
22 Agencies, and subdivisions; and the State Agencies, including
23 their Departments, Agencies and subdivisions.

24 (d) "Restore" or "Restoration" mean any action to
25 restore to its pre-spill condition any Natural Resource injured,
26 lost, or destroyed as a result of the December 1993 Oil Discharge
27 and the services provided by that Natural Resource, or any action
28

1 which restores, replaces, rehabilitates, or acquires the
2 equivalent of, the injured, lost, or destroyed Natural Resource
3 and affected services.

4 (e) "Natural Resources Damages" means all civil
5 compensatory and remedial relief recoverable by the Governments
6 in their capacities as Trustees on behalf of the public for
7 injury to, destruction of, or loss of any or all Natural
8 Resources resulting from the December 1993 Oil Discharge,
9 including but not limited to (1) costs of damage assessment, (2)
10 compensation for loss, injury, impairment, damage or destruction
11 of Natural Resources, whether temporary or permanent, or for loss
12 of use value (active and passive), non-use value, option value,
13 amenity value, bequest value, existence value, consumer surplus,
14 economic rent, or any other similar value of Natural Resources,
15 and (3) costs of restoration, rehabilitation, or replacement of
16 injured Natural Resources or the acquisition of equivalent
17 resources.

18 (f) "December 1993 Oil Discharge" means rupture
19 of an oil pipeline occurring in Berry's Montalvo facilities in
20 December 1993, creating contamination as a result of the release
21 and migration of crude oil into the soil and surface waters in
22 and around McGrath Lake, McGrath State Beach, the Santa Clara
23 River Estuary and the Pacific Ocean at McGrath State Beach, in
24 the County of Ventura, State of California.

25 (g) "Response Costs" mean response, removal
26 and/or clean-up costs incurred by the Governments in responding
27 to the December 1993 Oil Discharge, including but not limited to
28

1 actions taken to remove and clean up the spilled oil.

2 (h) The phrase "entry of this Decree" shall mean
3 the date on which the Court has approved and signed this Decree
4 and the Decree has been entered on the docket by the Clerk of the
5 Court.

6 SETTLEMENT PAYMENTS BY BERRY

7 4. Berry shall pay to the Governments the sum of
8 Three Million One Hundred Seventy Thousand One Hundred Dollars
9 Fifty-two Cents (\$3,170,100.52) (the "Settlement Amount") in the
10 manner set forth in paragraphs 5, 6, 8 and 11, inclusive, of this
11 Decree. The Parties acknowledge that Berry has already paid the
12 Governments a portion of the Settlement Amount, that is, the sum
13 of Six Hundred Twenty Thousand One Hundred Dollars Fifty-two
14 Cents (\$620,100.52), representing the verified invoices for
15 response costs as set forth in Paragraphs 11(d), (e), (f), (g)
16 (h) and (i).

17 5. Not later than fifteen (15) days following the
18 date of notice to Berry that all parties have executed this
19 Decree, Berry shall pay the Settlement Amount less the amount
20 previously paid for response costs as referenced in Paragraph 4,
21 into the Berry Settlement Escrow Account as described in
22 Paragraph 6 of this Decree.

23 6. Berry shall establish or cause to be established
24 an escrow account at a federally-chartered bank (the "Berry
25 Settlement Escrow Account") to receive and hold the Settlement
26 Amount and all interest accumulated on the Settlement Amount
27 pending entry of this Decree. The Berry Settlement Escrow
28

1 Account shall earn a rate of interest not less than the then
2 current rate on 30-day Treasury Bills, and all interest earned
3 thereon shall be for the benefit of and paid to the Governments,
4 except that if the Settlement Amount is returned to Berry as a
5 result of termination of this Decree, all interest thereon shall
6 be for the benefit of and paid to Berry. Any and all escrow fees
7 or service fees or other charges levied by such federally-
8 chartered bank handling the Berry Settlement Escrow Account and
9 disbursements therefrom in accordance with this Decree shall be
10 charged against the interest earned on such Account and shall not
11 be directly chargeable to Berry in any manner. To the extent,
12 however, there are any charges in excess of the interest earned,
13 such charges shall be borne by Berry.

14 7. All cleanup actions which were undertaken by the
15 Governments and by Berry as a result of the December 1993 Oil
16 Discharge have been concluded and, upon the payment of all money
17 from the Berry Settlement Escrow Account to the Governments in
18 accordance with this Decree, all Natural Resource Restoration
19 work will be the sole responsibility of the Trustees.

20 8. (a) Within fifteen (15) days after receiving
21 written notice of the entry of this Decree, Berry shall establish
22 a trust account with the National Fish and Wildlife Foundation in
23 the form of the McGrath Lake Trust Agreement (for the benefit of
24 the State Natural Resources Trustees, the California Department
25 of Fish and Game and the California Department of Parks and
26 Recreation), attached hereto as Exhibit 1, and instruct the
27 escrow holder to distribute \$1,315,000, plus the interest thereon

1 from the Berry Settlement Escrow Account into the McGrath Lake
2 Trust for Restoration of Natural Resources. Berry shall not
3 have, nor be held responsible for, any duties or liabilities
4 arising from or associated with the existence, establishment,
5 funding, or management of the McGrath Lake Trust beyond those
6 duties stated in this paragraph. Upon transfer of funds to the
7 Trustee of the McGrath Lake Trust as provided in this paragraph,
8 Berry shall have no further obligations, fiduciary, financial or
9 otherwise, with respect to the Trust.

10 The McGrath Lake Trust shall be used to implement
11 Restoration projects relating to Natural Resources Damages in the
12 McGrath Lake Area arising from the December 1993 Oil Discharge.
13 The Trustees shall bear sole responsibility for the undertaking
14 of such Restoration projects (and any programs, activities or
15 studies in connection therewith) and sole discretion concerning
16 the expenditure of sums from the McGrath Lake Trust.

17 (b) It is the intent of this Decree, upon satisfaction
18 by Berry of all the conditions of the Decree for which it is
19 responsible, to fully relieve Berry of all responsibility for and
20 obligation for Restoration of Natural Resources for which the
21 Trustees are Natural Resources Trustees.

22 The California Coastal Commission, the County of
23 Ventura, and the City of Oxnard, as a result of emergency Coastal
24 Development Permits issued by each of those agencies with respect
25 to the December 1993 Oil Discharge, have each required Berry to
26 apply for and obtain issuance of "regular" Coastal Development
27 Permits. Each of the permits has or is expected to contain a

1 condition that requires Berry to implement the natural resources
2 restoration plan adopted by the state and federal Natural
3 Resources Trustees. It is the intent of this Decree that the
4 Trustees will implement the natural resources restoration plan
5 that they adopt and that such implementation will fully satisfy
6 the condition of the regular permits relating to the Restoration
7 of Natural Resources. Notwithstanding the intent to satisfy the
8 condition of the several regular permits pertaining to
9 Restoration of Natural Resources, this Decree shall not be
10 construed to create any right or power in the permitting agencies
11 to seek to enforce the Restoration of Natural Resources
12 conditions against the state or federal Trustees. It is the
13 intent of the parties that Berry's payment of the required amount
14 to the McGrath Lake Trust shall fully satisfy Berry's obligation
15 arising pursuant to the condition.

16 If documents are required to be executed by any of the
17 parties to effectuate the provisions of this Paragraph 8, each
18 party whose assistance is needed agrees to cooperate by executing
19 and delivering such documents to the party(ies) needing
20 assistance.

21 9. Berry shall have no further responsibility under
22 the most recent Action Plan (the Bush Oil/Berry Petroleum Action
23 Plan for February 14, 1994 and Beyond) pertaining to the December
24 1993 Oil Discharge. Such Action Plan is cancelled and of no
25 further force or effect, and no further Action Plan(s) relating
26 to the December 1993 Oil Discharge will be imposed upon Berry.

27 10. As part of the process of approving Berry's
28

1 general permit application, the Coastal Commission issued an
2 Interim Site Stabilization Plan that may require Berry to expend
3 money to plant willow trees in the riparian corridor near where
4 the rupture in the pipeline occurred. In the event Berry expends
5 money to comply with the Coastal Commission's Interim Site
6 Stabilization Plan involving planting of willow trees in the
7 riparian corridor near where rupture of the pipeline occurred
8 Berry shall submit detailed cost documentation to the Trustees
9 with a request that it be reimbursed for those costs. The
10 Trustees will reimburse the reasonable costs from the McGrath
11 Lake Trust to the extent that the Trustees are not required to
12 incur duplicate costs due to discovery of persistent oil in the
13 soil where those willows may be planted. If oil is found in the
14 soil and the Trustees find it necessary during the removal of
15 that oil to dig up one or more of the trees, the Trustees will
16 incur a duplicate cost of replacing the tree(s). The duplicated
17 costs will not be reimbursed to Berry. The remaining reasonable
18 costs incurred by Berry in planting trees to comply with the
19 interim plan will be reimbursed.

20 11. Within fifteen (15) days after entry of this
21 Decree, Berry shall instruct the escrow holder holding the Berry
22 Settlement Escrow Account to irrevocably transfer the following
23 sums to the specified designees:

24 (a) The sum of \$175,000.00 plus the interest
25 thereon for remediation of environmental
26 injury through sediment contamination
27 characterization to the Regional Water
28

1 Quality Control Board-Los Angeles Region by
2 certified check or money order made payable
3 to "Los Angeles Regional Water Quality
4 Control Board Sediment Contamination
5 Characterization Discretionary Fund, Account
6 Number 34-1509-8888," and sent by certified
7 mail to:

8 San Jose State University Foundation
9 L.A. Regional Water Quality Control Board
10 Contamination Characterization
11 Discretionary Fund
12 Account Number 34-1509-8888
13 Contracts and Grants Office
14 P.O. Box 720130
15 San Jose, CA 96172-0190
16 ATTN: Erin Romer

17 (b) The sum of \$25,000.00 plus the interest
18 thereon to the Regional Water Quality Control
19 Board-Los Angeles Region as civil penalties
20 to the Cleanup and Abatement Account by
21 certified check or money order made payable
22 to "State Water Resources Control Board-
23 Cleanup and Abatement Account," and sent by
24 certified mail to:

25 State Water Resources Control Board
26 Accounting Office
27 901 P Street
28 Sacramento, CA 95812
ATTN: Kelly Bartlett

(c) The sum of \$25,000.00 plus the interest
thereon for civil penalties pursuant to
Section 11 of the Endangered Species Act, 16
U.S.C. § 1540, by certified check or money

1 order made payable to "U.S. Fish and Wildlife
2 Service," and sent by certified mail to:

3 The U.S. Fish and Wildlife Service
4 c/o Office of the Solicitor
5 600 Harrison Street, Suite 545
6 San Francisco, California 94107-1373

- 7 (d) The sum of \$51,758.29 plus the interest
8 thereon for losses (i.e., lost income
9 attributable to the December 1993 Oil
10 Discharge) to the State Department of Parks
11 and Recreation. The State Department of
12 Parks and Recreation warrants that promptly
13 upon receipt of the funds, it shall pay
14 \$5,882.99 of said funds that are owing to
15 Water Conservation Services Incorporated, a
16 vendor that was operating on park lands, and
17 was damaged by the December 1993 Oil
18 Discharge. Neither Berry nor the Oil Spill
19 Liability Trust Fund shall bear any
20 obligation to Water Conservation Services
21 Incorporated. The State Department of Parks
22 and Recreation will indemnify, defend and
23 hold Berry and the Oil Spill Liability Trust
24 Fund harmless from any claims or liabilities
25 alleged by Water Conservation Services
26 Incorporated arising from the December 1993
27 Oil Discharge. Payment shall be made by
28 certified check made payable to the

1 "California Department of Parks and
2 Recreation" and sent to:

3 Steven Treanor
4 California Department of Parks and
5 Recreation
6 District Superintendent
7 Channel Coast District
8 1933 Cliff Drive, Suite 27
9 Santa Barbara, CA 93109

- 10 (e) The sum of \$351,040.58 plus the interest
11 thereon for response and damage assessment
12 costs to the Department of Fish and Game-
13 Office of Oil Spill Prevention and Response.
14 Payment shall be made by certified check made
15 payable to the "Oil Spill Response Trust
16 Fund" and sent to:

17 Oil Spill Response Trust Fund
18 Department of Fish and Game
19 P. O. Box 944209
20 Sacramento, CA 94244-2090

- 21 (f) The sum of \$40,702.85 plus the interest
22 thereon for response and damage assessment
23 costs to the Department of Parks and
24 Recreation. Payment shall be made by
25 certified check made payable to the
26 "California Department of Parks and
27 Recreation" and delivered to:

28 Steven Treanor
California Department of Parks and
Recreation
District Superintendent
Channel Coast District
1933 Cliff Drive, Suite 27
Santa Barbara, CA 93109

1 (g) The sum of \$43,225.73 plus the interest
2 thereon for response costs in investigating
3 the December 1993 Oil Discharge to the State
4 Lands Commission. Payment shall be made by
5 certified check made payable to the "State
6 Lands Commission" and delivered to:

7 Mark Meier
8 State Lands Commission
9 100 Howe Avenue, Suite 100
10 Sacramento, CA 95825-8202

11 (h) The sum of \$2,400.00 plus the interest
12 thereon for damage assessment costs of the
13 United States Department of the Interior,
14 Office of the Solicitor. Payment shall be
15 made by certified check made payable to the
16 "Secretary of the Interior." That check
17 shall reflect that it is a payment to the
18 Natural Resources Damage Assessment and
19 Restoration Fund, Account No. 14x5198--
20 Assessment Cost Reimbursement" and shall
21 reference the "McGrath Lake Oil Discharge."

22 It shall be delivered to:

23 Chief, Division of Finance
24 U.S. Fish and Wildlife Service
25 4401 North Fairfax Drive, Room 380,
26 Arlington, VA 22203.

27 Additionally, the sum of \$10,661.90 for
28 damage assessment costs of the U.S. Fish and
Wildlife Service shall be paid by certified
check made payable to the "U.S. Fish and

1 Wildlife Service." That check shall reflect
2 that it is reimbursement for OPA fund costs
3 expended and shall reference the "McGrath
4 Lake Oil Discharge." It shall be delivered
5 to:

6 Marge Feysa
7 Branch of Budget
8 U.S. Fish and Wildlife Service
9 Region One
10 911 N.E. 11th Avenue
11 Portland, Oregon, 97232-4181.

- 12 (i) The sum of \$120,311.17 plus the interest
13 thereon for response costs to the United
14 States Coast Guard. Said sum includes
15 payment of response costs incurred by the
16 United States Fish and Wildlife Service and
17 the United States National Oceanic and
18 Atmospheric Administration. Payment shall be
19 made by certified check made payable to the
20 "Oil Spill Liability Trust Fund." It shall
21 be delivered to:

22 U. S. Coast Guard
23 4200 Wilson Boulevard
24 Suite 1000
25 Arlington, VA 22203-1804

- 26 (j) The sum of \$10,000.00 plus the interest
27 thereon for future costs of the United States
28 Department of the Interior, U.S. Fish and
Wildlife Service to develop a plan for
restoration and for future oversight and
monitoring of the restoration plan

1 implementation. Payment shall be made by
2 certified check made payable to the
3 "Secretary of the Interior." That check
4 shall reflect that it is a payment to the
5 Natural Resources Damage Assessment and
6 Restoration Fund, Account No. 14x5198--
7 Assessment Cost Reimbursement" and shall
8 reference the "McGrath Lake Oil Discharge."
9 It shall be delivered to:

10 Chief, Division of Finance
11 U.S. Fish and Wildlife Service
12 4401 North Fairfax Drive, Room 380,
Arlington, VA 22203.

- (k) The sum of \$100,000 plus the interest thereon
to the Department of Fish and Game - Office
of Oil Spill Prevention and Response to
develop a plan for restoration and for future
oversight and monitoring of the restoration
plan implementation. Payment shall be made
by tendering a certified check payable to the
Department of Fish and Game - Office of Oil
Spill and Prevention and Response or its
designee. It shall be delivered to:

23 The Department of Fish and Game
24 Office of Oil Spill Prevention and Response
Attn: Katherine Verrue-Slater, staff counsel
1700 K Street, Suite 250
Sacramento, California 95814

25 As used in this subparagraph, "designee"
26 shall mean any entity approved by the
27

1 Administrator of the Office of Oil Spill
2 Prevention and Response that is authorized to
3 engage in the restoration, monitoring, and
4 oversight activities required to implement
5 this agreement.

- 6 (1) The sum of \$100,000 plus interest thereon to
7 the Department of Parks and Recreation to
8 develop a plan for restoration and for future
9 oversight and monitoring of the restoration
10 plan implementation. Payment shall be made
11 by tendering a certified check payable to the
12 Department of Parks and Recreation. It shall
13 be delivered to:

14 Steven Treanor
15 California Department of Parks
16 and Recreation
17 District Superintendent
18 Channel Coast District
19 1933 Cliff Drive, Suite 27
20 Santa Barbara, CA 93109

- 21 (m) The sum of Eight Hundred Thousand Dollars
22 (\$800,000.00) plus the interest thereon for
23 civil penalties pursuant to Section 311 of
24 the Federal Water Pollution Control Act, 33
25 U.S.C. §1321. Payment shall be made by
26 tendering a certified or cashier's check made
27 payable to the "Oil Spill Liability Trust
28 Fund." It shall be delivered to:

U. S. Coast Guard
4200 Wilson Boulevard
Suite 1000

12. Verified invoices have been submitted by the named agencies to Berry for the response costs described in paragraphs 11(d), (e), (f), (g), (h) and (i). Response costs not included in the verified invoices for 11(d), (e), (f), (g), (h) and (i) shall not be chargeable or payable by Berry. As referenced in Paragraphs 4 and 5, Berry has previously paid to the Governments the sum of \$620,100.52 representing payment in full of the verified invoices for response costs referenced in paragraphs 11(d), (e), (f), (g), (h) and (i). No costs (including response and damage assessment costs) incurred by the Governments after October 18, 1994 shall be charged to or payable by Berry, except as provided in paragraph 18 with respect to claims presented to and paid by the Oil Spill Liability Trust Fund or the California Oil Spill Response Trust Fund.

13. The Trustees commit to the expenditure of the funds set forth in paragraph 8 above, for the design, implementation, permitting, and monitoring of Restoration projects pursuant to the natural resources restoration plan adopted by the Trustees. While acknowledging the need to satisfy the County of Ventura and the Coastal Commission, the Trustees retain the ultimate authority and responsibility to determine the use of funds received for Natural Resource Damages in accordance with relevant federal or state law, and the regulations governing use of recoveries for Natural Resource Damages.

/ / / / / /

/ / / / / /

1 RELEASES AND COVENANTS NOT TO SUE

2 14. Subject to the provisions of Paragraph 18,
3 effective upon entry of this Decree and Berry's payment of the
4 Settlement Amount in the manner prescribed in paragraphs 5, 6, 8
5 and 11 inclusive, of this Decree, the Governments release Berry
6 from, and covenant not to sue or take any other civil or
7 administrative action against Berry for, any and all civil claims
8 alleged in the Complaint in this action and all claims for
9 damages and civil penalties including, but not limited to, injury
10 to, loss of, or destruction of Natural Resources arising out of
11 the December 1993 Oil Discharge alleged in the Complaint.

12 15. Effective upon entry of this Decree, Berry
13 releases the Governments from, and covenants not to sue or to
14 take any other civil or administrative action against the
15 Governments, including the Oil Spill Liability Trust Fund, for
16 any and all civil claims that arise from, or are based on, the
17 December 1993 Oil Discharge. Berry further releases all
18 agencies, entities and employees of the State of California,
19 including but not limited to the California Highway Patrol.
20 Berry further waives the requirements of 50 C.F.R. Part 11,
21 pertaining to the issuance of an administrative Notice of
22 Violation, with regard to the civil penalty pursuant to the
23 Endangered Species Act.

24 RESERVATION OF RIGHTS

25 16. Nothing in this Decree creates, nor shall it be
26 construed as creating, any claim in favor of any person not a
27 party to this Decree.

1 17. The covenants not to sue in paragraphs 14 and 15
2 shall apply only to matters expressly set forth in said
3 paragraphs. Nothing in this consent decree is intended to nor
4 shall be construed as a release or covenant not to sue for any
5 claim or cause of action, administrative or judicial, civil or
6 criminal, in law or in equity, which any party may have against
7 the other for failure to satisfy the requirements of this Decree,
8 or which the Governments may have against Berry for:

9 (a) Claims for criminal liability brought by the
10 United States;

11 (b) Claims based on any release or threatened
12 release at any location not in the McGrath Lake Area not
13 attributable to the December 1993 Oil Discharge; and

14 (c) Claims based on any future release or
15 threatened release at the McGrath Lake Area not attributable to
16 the December 1993 Oil Discharge.

17 **RE-OPENER FOR CERTAIN CLAIMS ARISING FROM ORIGINAL**
18 **DISCHARGE**

19 18. Notwithstanding the payments specified in
20 Paragraph 11(i) to the United States Coast Guard, and Paragraph
21 11(e) to the Department of Fish and Game-Office of Oil Spill
22 Prevention, the Oil Spill Liability Trust Fund, and the
23 California Oil Spill Response Trust Fund retain their respective
24 rights, including rights to subrogation vested in said Funds by
25 33 U.S.C. § 2715 and California Government Code Section 8670.51
26 and 51.1, respectively, for any removal costs or damages paid and
27 any costs incurred by the Oil Spill Liability Trust Fund or

1 the California Oil Spill Response Trust Fund by reason of any
2 Third Party Claims presented to the Oil Spill Liability Trust
3 Fund or the California Oil Spill Response Trust Fund within the
4 applicable statute of limitations. Berry reserves the right to
5 defend and contest any Third Party Claim as may be provided under
6 federal and state statutes and regulations.

7 NOTICES AND SUBMITTALS

8 19. Whenever, under the terms of this Decree, written
9 notice is required to be given by one Party to another, it shall
10 be directed to the individuals and addresses specified below,
11 unless the individuals specified or their successors give notice,
12 in writing, to the other Parties that notice should be directed
13 to a different individual or address:

14 Notice to the United States:

15 Chief, Environmental Enforcement Section
16 Environment and Natural Resources Division
17 U.S. Department of Justice
18 P.O. Box 7611
19 Ben Franklin Station
20 Washington, D.C. 20044

21 Notice to the State Agencies:

22 Jennifer Rosenfeld
23 Deputy Attorney General
24 Office of the California
25 Attorney General
26 300 South Spring Street
27 Los Angeles, CA 90013

28 Administrator
Department of Fish and Game
Office of Oil Spill Prevention and Response
1700 K Street
Sacramento, CA 94244-2090

29 Notice to Berry:

30 Jerry V. Hoffman

1 President, Berry Petroleum Company
2 Post Office Bin X
3 Taft, California 93268

4 with copy to:

5 Laura K. McAvoy
6 Nordman, Cormany, Hair & Compton
7 1000 Town Center Drive, 6th Floor
8 Post Office Box 9100
9 Oxnard, California 93031-9100

10 TERMINATION

11 20. In the event this Decree is not approved in
12 accordance with Paragraph 3(h), Berry shall have the right to
13 terminate this Decree and obtain release of the Escrow Funds,
14 together with the interest thereon, to its own account.

15 REPRESENTATIVES

16 21. Each of the undersigned representatives of Berry,
17 each representative of the Departments and Agencies of the State
18 of California and the Assistant Attorney General certifies that
19 he or she is fully authorized to enter into the terms and
20 conditions of this Decree and to execute and legally bind the
21 parties to this Decree.

22 INTEGRATION CLAUSE

23 22. This document (including its exhibits) encompasses
24 the entire Decree of the Parties with respect to the subject
25 matter hereof and totally supersedes all prior decrees or
26 understandings, whether oral or in writing.

27 MODIFICATION

28 23. Minor modifications not materially altering this
Decree may be effected by the written agreement of the Parties.
No other modifications of this Decree may be made unless the

1 Parties agree in writing to the modification and the Court
2 approves of the requested modification. Nothing in this
3 paragraph shall be deemed to limit the Court's power to supervise
4 or modify this Decree.

5 CONFIDENTIALITY

6 24. As between the State Agencies and Berry, the
7 parties acknowledge that as a "reporting company" under the
8 Securities Exchange Act of 1934 (the "Exchange Act") and a
9 company listed on the New York Stock Exchange, Berry is required
10 to disclose the existence of this Decree within mandated time
11 frames. In order to allow Berry to comply with such disclosure
12 responsibilities in a responsible manner, the State Agencies
13 agree that neither they nor their representatives shall issue any
14 news or press release or otherwise publicize in any manner this
15 Decree or its terms, prior to the lodging of this executed Decree
16 with the Court.

17 SIGNING IN COUNTERPARTS

18 25. This Decree may be executed in several
19 counterparts, all of which when taken together, will constitute
20 one Decree.

21 Dated and entered this _____ day of _____, 1996.
22
23
24

25 UNITED STATES DISTRICT JUDGE
26
27
28

1 WE HEREBY CONSENT to the entry of this Decree:

2 FOR THE UNITED STATES OF AMERICA:

3
4 LOIS J. SCHIFFER
5 Assistant Attorney General
6 Environmental and Natural Resources
7 Division
8 United States Department of Justice
9 United States Department of Justice
10 P.O. Box 7611
11 Washington, D.C. 20044

Date: 5/3/96

12 RICHARD L. BEAL
13 Environmental Enforcement Section
14 Environmental and Natural Resources
15 Division
16 San Francisco, CA

Date: 10-22-96

1 WE HEREBY CONSENT to the entry of this Decree:

2 
Date: 10/6/96

3 STEVEN A. HERMAN
4 Assistant Administrator for
5 Enforcement and Compliance Assurance
6 U.S. Environmental Protection Agency
7 Washington, D.C.

8 
Date: 6 August 1996

9 FELICIA MARCUS
10 Regional Administrator
11 U.S. Environmental Protection Agency,
12 Region 9
13 San Francisco, CA
14
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1 WE HEREBY CONSENT to the entry of this Decree:

2 FOR THE STATE AGENCIES:

3 CALIFORNIA DEPARTMENT OF FISH &
4 GAME/OFFICE OF OIL SPILL
5 PREVENTION AND RESPONSE

6 _____
7 PETER F. BONTADELLI
8 Administrator

Date: _____

9 CALIFORNIA DEPARTMENT OF PARKS &
10 RECREATION

11 _____
12 DONALD W. MURPHY
13 Director

Date: _____

14 CALIFORNIA REGIONAL WATER QUALITY
15 CONTROL BOARD-LOS ANGELES REGION

16 _____
17 Dr. ROBERT GHIRELLI
18 Executive Officer

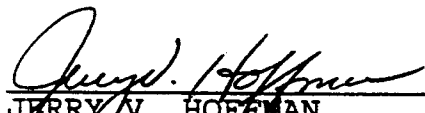
Date: _____

19 CALIFORNIA STATE LANDS COMMISSION

20 _____
21 *Robert C. Hight*
22 ROBERT C. HIGHT
23 Executive Officer

24 Date: 6-28-96
25
26
27
28

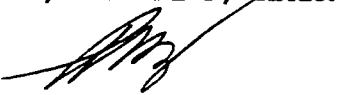
1 WE HEREBY CONSENT to the entry of this Decree:
2 FOR BERRY PETROLEUM COMPANY:

3
4 
5 JERRY V. HOFFMAN
6 President
BERRY PETROLEUM COMPANY
a Delaware corporation

Date: 6/19/96

7 APPROVED AS TO FORM:

8 NORDMAN, CORMANY, HAIR & COMPTON

9
10 By: 
11 Laura K. McAvoy
12 Attorney for Berry Petroleum
Company

Date: June 24, 1996

13 OFFICE OF THE ATTORNEY GENERAL
14 OF THE STATE OF CALIFORNIA

15
16 By: 
17 Jennifer W. Rosenfeld
Deputy Attorney General

Date: 10/24/96

EXHIBIT 1

McGRATH LAKE TRUST

This Trust is established with the National Fish and Wildlife Foundation (the "Foundation") by Berry Petroleum Company (the "Settlor"), for the benefit of the State Natural Resources Trustees, the California Department of Fish and Game and the California Department of Parks and Recreation.

I. DEFINITIONS

1. The "Consent Decree" means the Consent Decree in the Federal District Court for the Central District of California styled United States, et al. v. Berry Petroleum Company, resolving claims regarding the McGrath Lake oil spill.

2. The "Court" means the United States District Court for the Central District of California.

3. The "Foundation" means the National Fish and Wildlife Foundation.

4. "MOU" means the Memorandum of Understanding entered into in connection with the McGrath Lake oil spill by the California Department of Fish and Game, the California Department of Parks and Recreation and the United States Fish and Wildlife Service.

5. "Natural Resource" and "Natural Resources" mean land, fish, wildlife, biota, air, water, ground water, drinking water supplies, and other such resources belonging to, managed by, held in trust by, appertaining to, or otherwise controlled by the United States or the State of California.

6. The "Natural Resource Trustees" means the California

1 Department of Fish and Game and the California Department of
2 Parks and Recreation.

3 7. The "Natural Resource Trustee Council" or "NRT Council"
4 means the group of representatives of each of the California
5 Natural Resource Trustees and the United States Fish and Wildlife
6 Service, selected pursuant to a Memorandum of Understanding
7 entered into by the Natural Resource Trustees.

8 8. "Restoration Project" means any action to restore or
9 rehabilitate any injured, lost, damaged, or destroyed Natural
10 Resource (and the services provided by that Natural Resource), or
11 any action that replaces or acquires the equivalent of, the
12 injured, lost, or destroyed Natural Resource and affected
13 services injured, lost, or destroyed as a result of rupture of an
14 oil pipeline occurring in Berry Petroleum Corporation's West
15 Montalvo Oil Field Facilities in December, 1993, creating
16 contamination that resulted in the release and migration of crude
17 oil into the soil and surface waters (collectively "December 1993
18 Oil Discharge") in and around McGrath Lake, McGrath State Beach,
19 the Santa Clara River Estuary and the Pacific Ocean at McGrath
20 State Beach, Ventura County, State of California.

21 9. The "Segregated Account" means the account in which the
22 Foundation holds funds subject to the McGrath Lake Trust.

23 10. "Settlement Funds" means the money paid into this Trust
24 pursuant to a requirement in the Consent Decree.

25 11. The "State" means the California Department of Fish
26 and Game and the California Department of Parks and Recreation.

27 12. The "Trust" means the McGrath Lake Trust established by
28

1 this Agreement.

2 13. The "Trustee" means the trustee of the McGrath Lake
3 Trust.

4 14. The "United States" means the United States of America,
5 its departments and agencies.

6 II. PURPOSE

7 15. The purpose of this Agreement is to establish the Trust
8 and to appoint the Foundation as its Trustee. This Agreement
9 outlines the terms under which the Foundation shall exercise this
10 function.

11 16. The purpose of the Trust is to receive, manage and
12 disburse funds, in accordance with the direction of the NRT
13 Council through their designated representative(s), for certain
14 Restoration Projects to Restore Natural Resources injured as a
15 result of the December 1993 Oil Discharge.

16 III. SETTLOR

17 17. The Settlor, Berry Petroleum Company, shall fund this
18 Trust pursuant to a requirement in the Consent Decree. With the
19 exception of the obligation to establish and fund this Trust,
20 Settlor shall have no rights, duties, obligations, fiduciary or
21 financial responsibilities of any kind in connection with this
22 Trust. Without limiting the foregoing, Settlor shall have no
23 rights, duties, obligations, fiduciary or financial
24 responsibilities with respect to the management of this Trust,
25 the use of funds held in this Trust, property acquired with Trust
26 funds, or Natural Resource Restoration Projects funded by the
27 Trust. This Trust is irrevocable and Settlor retains no interest

1 whatsoever in the corpus or proceeds of this Trust.

2 IV. TRUSTEE

3 18. The Foundation shall be Trustee of the Trust.

4 19. The Court shall have the power to appoint a replacement
5 Trustee if the office of the Trustee becomes vacant.

6 20. The Court shall have the power to remove the Trustee if
7 at any time it determines that the Trustee is not performing its
8 duties in a manner that is consistent with the purposes of the
9 Trust. The State shall have the right to ask the Court to remove
10 the Trustee or to terminate the Trust.

11 21. In addition to the powers expressly granted to the
12 Trustee by this Agreement, the Trustee shall have all other
13 powers granted to Trustees under the laws of the State of
14 California, except as otherwise provided in this Agreement.

15 22. The Foundation submits to the jurisdiction of the U.S.
16 District Court for the Central District of California for
17 purposes of enforcement, administration, and supervision of the
18 Trust.

19 23. Unless otherwise agreed by the NRT Council, the
20 Foundation shall not hold an interest in any real or personal
21 property acquired with Settlement Funds nor shall it acquire,
22 manage or dispose of such property.

23 24. Settlement Funds shall not be deemed federal funds
24 within the meaning of 16 U.S.C. § 3703(e).

25 V. BENEFICIARIES

26 25. The People of the State of California are the
27 beneficiaries of the Trust.

1 VI. DUTIES OF TRUSTEE

2 26. The Trustee shall maintain funds subject to the Trust
3 in a Segregated Account separate from all other Foundation
4 accounts.

5 27. All funds held in the Segregated Account shall be
6 invested as directed by the NRT Council and, in the absence of
7 specific instructions, shall be invested in U.S. Treasury Bills
8 and notes. Interest and earnings accruing to the Segregated
9 Account shall be reinvested in the Segregated Account and used to
10 carry out the purposes of the Trust.

11 28. The Trustee is authorized and obligated to make
12 disbursements of funds from the Segregated Account pursuant to
13 paragraphs 34 and 37 below.

14 29. The Foundation shall appoint an individual, the
15 Foundation Representative, who will represent the Foundation in
16 carrying out its obligations as Trustee under this Agreement.
17 The Foundation shall identify to the NRT Council, in writing, the
18 identity, mailing address, and phone number of the Foundation
19 Representative. Any change in the Foundation Representative
20 shall be communicated to the NRT Council within 10 business days
21 of the change.

22 30. The Trustee shall fund, subject to paragraph 37 below,
23 Restoration Projects as directed by the NRT Council.

24 31. The Trustee shall submit to the NRT Council an annual
25 report, by December 15 of each year, which itemizes all funds
26 maintained, deposited, accrued, and disbursed from the Segregated
27 Account.

VII. SELECTION OF AUTHORIZED PROJECTS

32. The NRT Council shall, pursuant to the MOU, select Restoration projects to be funded by the Trust.

33. The NRT Council shall appoint a representative ("NRT Council Representative") for purposes of communicating with the Foundation regarding management of the Trust and disbursements from the Trust to facilitate Restoration Projects selected by the NRT Council. The NRT Council shall give the Foundation Representative written notice of the name, address, and telephone number of the NRT Council Representative. Any action taken by the Trustee in strict accordance with this Trust Agreement and instructions from the NRT Council Representative shall be considered authorized by the State.

34. The Trustee shall make disbursements from the Trust only when the NRT Council Representative has submitted to the Trustee a written authorization for the disbursements approved by the Natural Resource Trustee Council.

VIII. PAYMENT OF TRUST EXPENSES AND DISBURSEMENT OF FUNDS

35. The Trustee shall receive, at the time funds are transferred to the Trust, an initial administrative overhead reimbursement equal to three percent (3%) of the total funds transferred to the Segregated Account. The uses of these funds include expenses for day to day management of the Trust, initial bank charges for establishment of the Trust and charges for the first year, and for personnel time for tracking, managing, and making disbursement from the Trust. This reimbursement shall be made against the corpus of the Trust. There shall be no

1 liability for payment by the Settlor beyond the \$1,315,000, plus
2 the accrued interest thereon, for natural resource damages
3 required to be paid pursuant to the Consent Decree and Settlement
4 Agreement. The Trustee shall make no charge against the Settlor
5 for the establishment of this Trust, and except as provided in
6 paragraph 34, no additional charges or deductions shall be made
7 against the corpus of the Trust in connection with the
8 administration of the Trust.

9 36. The Trustee will be reimbursed for all reasonable and
10 actual expenses incurred in connection with the satisfaction of
11 its obligations under this Agreement, provided however, that such
12 expenses must be approved in writing as reasonable by the NRT
13 Council. Such expenses would generally be for extraordinary
14 expenses not contemplated to be incurred as part of normal
15 management of the Trust, as set forth in paragraph 35. Bank
16 charges for the Trust after the first year may be paid from
17 interest collected on the Trust, and to the extent not covered by
18 accrued interest, shall be paid pursuant to this paragraph.

19 37. Upon receipt of written approval by the NRT Council to
20 fund Restoration Project(s) pursuant to paragraph 35 above, the
21 Trustee is authorized and obliged to disburse funds in the
22 Segregated Account as directed by the NRT Council Representative.

23 38. Nothing in this Agreement shall create any right or
24 benefit, substantive or procedural, enforceable at law by a party
25 against the Foundation, its officers, employees, or any other
26 person.

27 IX. AMENDMENTS

1 39. This Agreement may be amended only by written agreement
2 of the Foundation and all of the Natural Resource Trustees, and
3 with approval of the Court that entered the Consent Decree.

4 X. NOTICES

5 40. Notices under this Agreement shall be made in writing
6 and may be given by delivery in person, by mail or by telecopy
7 (fax).

8 Administrator, California Office of
9 Oil Spill Prevention and Response
10 1700 K. Street
Suite 250
Sacramento, CA 95814

11 41. Notices to the Foundation shall be sent to:

12 Whitney C. Tilt
13 National Fish and Wildlife Foundation
1120 Connecticut Ave., NW
14 Washington, D.C. 20036
Phone: (202) 857-0166
15 Fax: (202) 857-0162

16 XI. EFFECTIVE DATE

17 42. The Trust shall become effective upon transfer of
18 settlement proceeds to the Trustee pursuant to the Consent
19 Decree.

20 XII. TERMINATION

21 43. The Trust shall terminate when all funds subject to the
22 Trust have been disbursed and the parties agree to termination in
23 writing.

24 FOR SETTLOR

25 BERRY PETROLEUM CORPORATION

26 Dated: 6/19/96

27 By: Jerry V. Hoffman
Jerry V. Hoffman

1 President

2 FOR THE STATE AGENCIES

3 CALIFORNIA DEPARTMENT OF FISH &
4 GAME/OFFICE OF OIL SPILL
5 PREVENTION AND RESPONSE

6 Dated: 17 July 1996

7 By: Peter F. Bontadelli
8 Peter F. Bontadelli
9 Administrator

10 CALIFORNIA DEPARTMENT OF PARKS &
11 RECREATION

12 Dated: _____

13 By: _____
14 Donald W. Murphy
15 Director

16 FOR THE NATIONAL FISH AND
17 WILDLIFE FOUNDATION

18 Dated: _____

19 By: _____
20 Whitney C. Tilt

President

FOR THE STATE AGENCIES

CALIFORNIA DEPARTMENT OF FISH &
GAME/OFFICE OF OIL SPILL
PREVENTION AND RESPONSE

Dated: _____

By: _____
Peter F. Bontadelli
Administrator

CALIFORNIA DEPARTMENT OF PARKS &
RECREATION

Dated: 7/10/96

By: Donald W. Murphy
Donald W. Murphy
Director

FOR THE NATIONAL FISH AND
WILDLIFE FOUNDATION

Dated: _____

By: _____
Whitney C. Tilt

President

FOR THE STATE AGENCIES

CALIFORNIA DEPARTMENT OF FISH &
GAME/OFFICE OF OIL SPILL
PREVENTION AND RESPONSE

Dated: _____

By: _____
Peter F. Bontadelli
Administrator

CALIFORNIA DEPARTMENT OF PARKS &
RECREATION

Dated: _____

By: _____
Donald W. Murphy
Director

FOR THE NATIONAL FISH AND
WILDLIFE FOUNDATION

Dated: 30 October 76

By: Whitney C. Tilt
Whitney C. Tilt

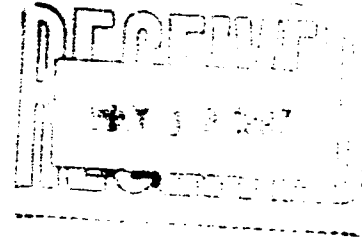
APPENDIX C MEMORANDUM OF UNDERSTANDING

DEPARTMENT OF FISH AND GAME

1416 NINTH STREET
BOX 944209
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May 15, 1997



Mr. Michael J. Spear
Regional Director - Region One
U.S. Department of Interior
Fish and Wildlife Service
911 N.E. Eleventh Avenue
Portland, Oregon 97232-4181

Mr. Donald W. Murphy
District Superintendent
Department of Parks and Recreation
Channel Coast District
1933 Cliff Drive, Suite 27
Santa Barbara, California 93109

Mr. Chuck McKinley
Department of the Interior
U.S. Fish & Wildlife Service
Office of the Solicitor
600 Harrison Street, Suite 545
San Francisco, California 94107-1373

Dear Mssrs. Spear, McKinley, and Murphy:

**McGrath Lake Oil Spill
Trustee Council Memorandum of Understanding (MOU)**

Please find enclosed a fully executed copy of the McGrath Lake Oil Spill Trustee MOU. The United States Fish and Wildlife Service has designated its Natural Resource Trustee (NRT) Council representatives as Ms. Diane Noda, Project Leader, Ventura Field Office (primary) and Mr. Steven Henry, Division of Environmental Contaminants, Ventura Field Office (alternate). Pursuant to section VII of the MOU, each Trustee has twenty (20) days after full execution within which to notify the others of the names, addresses, telephone numbers and facsimile numbers of that Trustee's primary and alternative representatives and designated legal counsel to the NRT Council.

If you have any questions or comments, please feel free to contact either my secretary, Marguerite L. Diaz, at telephone number (916) 324-9799 or me at telephone number (916) 324-9813.

Sincerely,

Katherine Verrue-Slater
Staff Counsel
Office of Spill Prevention
and Response

Enclosure

cc: Mr. Tim LaFranchi
Department of Parks and Recreation

Mr. Roger Helm
U.S. Department of Interior

**MEMORANDUM OF UNDERSTANDING
RELATING TO
THE McGRATH LAKE OIL SPILL
BETWEEN THE
DEPARTMENT OF FISH AND GAME
OFFICE OF OIL SPILL PREVENTION AND RESPONSE,
THE DEPARTMENT OF PARKS AND RECREATION,
AND
THE U.S. DEPARTMENT OF INTERIOR,
Represented by the U.S. FISH AND WILDLIFE SERVICE**

I. INTRODUCTION

The Memorandum of Understanding (MOU), is between the California Department of Fish and Game (DFG), the California Department of Parks and Recreation (DPR), and the U.S. Department of the Interior represented by the U.S. Fish and Wildlife Service (USFWS) (hereafter referred to individually as the "Trustee" and collectively as the "Trustees"). This MOU is entered into to ensure the coordination and cooperation of the Trustees in restoring, rehabilitating, replacing, and/or acquiring the equivalent of the natural resources injured as a result of the release of oil from the Berry Petroleum Company (Berry) pipeline near McGrath State Beach in Ventura County, California, in December 1993.

II. PARTIES

The following officials, or their designees, are parties to this MOU and act on behalf of the public as Trustees for natural resources under this MOU:

- Administrator
Department of Fish and Game
Office of Oil Spill Prevention and Response
- Director
Department of Parks and Recreation
- Regional Director
United States Fish and Wildlife Service
Region 1
(on behalf of the Secretary of the U.S. Department of the Interior)

III. AUTHORITY

The Trustees enter into this MOU pursuant to the Natural Resources Trustee (NRT) authorities provided to the Trustees by: the Oil Pollution Act (33 U.S.C. §§ 2701 et seq.); the Water Pollution Prevention and Control Act (33 U.S.C. §§ 1251 et seq.); the National Oil and Hazardous Substances Pollution Contingency Plan, Subpart G (40 C.F.R. §§ 300.600 et seq.); Executive Order 12580 (3 C.F.R., 1987 Comp., p. 193, 52 Fed.Reg. 2923 (January 23, 1987)), as amended by Executive Order 12777 (56 Fed.Reg. 54757 (October 19, 1991)), and Executive Order 13016 (61 Fed.Reg. 45871 (August 320, 1996)); the Oil Pollution Act Damage Assessment

Regulations (15 C.F.R. §§ 990 et seq.); the DOI's Natural Resources Damage Assessment Regulations, as amended (43 C.F.R. §§ 11 et seq.), as applicable; and any other applicable law. The DFG also enters into this MOU pursuant to its NRT authority (Fish & G. Code § 1802), and the Lempert-Keene-Seastrand Oil Spill Prevention and Response Act (Gov. Code §§ 8670.1 et seq.).

IV. DEFINITIONS

Whenever the following terms are used in this MOU, they shall have the follow meanings:

A. Natural Resource and Natural Resources

"Natural Resource" and "Natural Resources" mean land, fish, wildlife, biota, air, water, groundwater, drinking water supplies, and other such resources belonging to, managed by, held in trust by, appertaining to, or otherwise controlled by the United States and/or the State of California, and the "services" that the resources provided to other natural resources and/or humans.

B. Oil Spill

"Oil Spill" means the release of approximately 2075 barrels of crude oil from a Berry pipeline at the West Montalvo Field near Oxnard, California, in December 1993.

C. Restoration

"Restoration" means any action which restores, replaces, rehabilitates, and/or acquires the equivalent of the Natural Resources and the "services" (as that term is defined at 15 C.F.R. § 990.30 and 43 C.F.R. § 11.14 (nn), as applicable) provided by the Natural Resources that were injured, lost, or destroyed by the Oil Spill.

V. THE SETTLEMENT OF THE OIL SPILL

A settlement of the Oil Spill has been reached with Berry in lieu of litigation and has been embodied in a Consent Decree which was entered by the U.S. District Court for the Central District of California on February 13, 1997. Pursuant to the Consent Decree the defendant paid the sum of \$1,315,000, plus interest, to be dedicated to restoring Natural Resources. Additionally, the Consent Decree required the defendant to pay the sum of \$100,000, plus interest, to the DFG, \$100,000, plus interest, to the DPR, and \$10,000, plus interest, to the USFWS to develop a plan for restoration and for future oversight and monitoring of the restoration plan implementation.

Pursuant to the Consent Decree, \$1,315,000, plus interest, will be maintained in a trust account with the National Fish and Wildlife Foundation (the "McGrath Lake Trust"). The DFG, DPR, and USFWS, as co-equal joint Trustees, commit to the expenditure of the funds set forth in this paragraph, for the design, implementation, permitting, as necessary, and monitoring and oversight of Restoration projects in and around McGrath State Beach. The Trustees shall use said funds for water quality improvement of McGrath Lake, habitat improvements, revegetation, and/or protection of areas in and around McGrath State Beach.

The Trustees have prepared a Restoration Scoping Document (Attachment A) which contains three restoration components: (1) Lake Restoration; (2) Riparian Restoration, and (3) Restoration of Modified Dunes. The Trustees shall prepare a Restoration Plan proposal containing details for specific projects outlined in the Restoration Scoping Document and/or

projects providing similar benefits to the affected resources. The final Restoration Plan will be developed and implemented after providing public notice, opportunity for a hearing, and consideration of all public comments. The Trustees retain the ultimate authority and responsibility to determine the use of funds received for Natural Resource damages in accordance with the provisions of the Oil Pollution Act (33 U.S.C. §§ 2701 et seq.), other relevant Federal and State laws, and the regulations governing use of recoveries for Natural Resource damages.

VI. PURPOSE

The purpose of this MOU is to provide a framework for coordination and cooperation among the trustees in the use of the proceeds from the Oil Spill settlement for water quality improvement of McGrath Lake, habitat improvements, revegetation, and/or protection of areas in and around McGrath State Beach.

VII. ORGANIZATION - NATURAL RESOURCES TRUSTEE COUNCIL AND LEAD TRUSTEES FOR SPECIFIC PROJECTS

To implement this MOU, there is hereby created a Natural Resources Trustee Council (the "NRT Council") to which each of the Trustees will designate one primary representative and at least one alternate representative. Each party to this MOU shall have one vote that shall be cast by the parties' primary representative, or in the absence of the primary representative, by their respective alternate representative.

Within twenty (20) working days after the final execution of this MOU, each Trustee shall notify the other Trustees of the names, addresses, telephone numbers, and facsimile numbers of that Trustee's primary and alternative representatives and designated legal counsel to the NRT Council. Communications regarding the NRT Council business shall be addressed to the primary representatives and, unless the NRT Council directs otherwise, copied to the alternate representatives.

Designated representatives of the DOI's Office of the Solicitor and the legal advisor of the Office of Oil Spill Prevention and Response (OSPR) shall serve as legal counsel to the NRT Council. The NRT Council will also seek advisory participation of other Federal or State agencies, including the California Attorney General's Office, the U.S. Department of Justice, the DOI's Office of Environmental Policy and Compliance, or any other agency as deemed appropriate by the NRT Council.

VIII. DECISION-MAKING

The Trustees agree that, except as specifically delegated to a specific Trustee pursuant to Section IX below, decisions implementing this MOU and the Consent Decree shall require the unanimous approval of the voting NRT Council members. Decisions shall be recorded in writing, either by resolution signed by the parties, or in minutes approved as to content and form by the parties.

In the event that unanimous agreement cannot be reached among the NRT Council members, the matter in dispute will be elevated within the Trustee agencies for resolution. If necessary, the trustees may establish further mechanisms to resolve disputes. The Trustees agree that decision-making deliberations will focus on the trustee's mutual purposes of restoring injured Natural Resources and lost services rather than on individual Trustee control or trusteeship over those resources.

IX. POWERS, DUTIES, AND RESPONSIBILITIES

A. Natural Resources Trustee Council

On behalf of the Trustees, the NRT Council shall coordinate and authorize all Trustee activities and matters under this MOU in accordance with the procedures contained in Section VII above. The NRT Council may take whatever actions the NRT Council, in its discretion, determines are necessary to fulfill the Trust responsibilities of each Trustee under, and to effectuate the purposes of, the Consent Decree and applicable Federal and State law. Any Trustee representative on the NRT Council may consent to a meeting of the full NRT Council. It is expected that the NRT Council, in accordance with applicable laws and policies, may take the following actions, among others, to address the Trustees' Natural Resource trustee responsibilities:

1. Oversee the development and implementation of the plan for Lake Restoration and Habitat Restoration Projects including Riparian Restoration and Restoration of Modified Dunes. If such plan includes acquisition, ensure that such acquisition includes any improvements of habitat on these sites necessary to achieve total replacement of Natural Resources lost as a result of the Oil Spill;
2. Arrange for the letting of contracts that the NRT Council determines are necessary, with professional consultant(s) or contractor(s), technical or otherwise, best qualified to provide services to the NRT Council;
3. Make or oversee all necessary decisions for the management and administration of monies deposited into the McGrath Lake Trust for the purpose of implementing the Lake Restoration and Habitat Restoration Projects including Riparian Restoration and Restoration of Modified Dunes;
4. Direct the Lead Trustee for the Lake Restoration and Habitat Restoration Projects including Riparian Restoration and Restoration of Modified Dunes, as set forth below in Subsection B, to approve disbursements from the McGrath Lake Trust and to take all steps necessary to effect the disbursements, when so directed by the Trustee Council;
5. Select other Restoration projects if: (a) the Lake Restoration and/or Habitat Restoration Projects including Riparian Restoration and Restoration of Modified Dunes described in the final Restoration Plan prove infeasible, impractical, or otherwise not in the public interest; or (b) any funds remain after the successful implementation of the projects described in the final Restoration Plan, provided that such other projects address and have a reasonable geographic and Natural Resource nexus to the injuries caused by the Oil Spill or otherwise meet the requirements of applicable Federal and State law; and
6. Delegate specific duties to individual Trustee representatives. Certain duties set out below are hereby delegated to the Lead Trustee for specific projects.

B. Lead Trustee for the Lake Restoration and Habitat Restoration Projects including Riparian Restoration and Restoration of Modified Dunes

The Lead Trustee for the Lake Restoration and Habitat Restoration Projects including Riparian Restoration and Restoration of Modified Dunes shall be the DPR. The NRT Council primary representative for the DPR or that representative's designee, on behalf of the Lead

Trustee for the Lake Restoration and Habitat Restoration Projects including Riparian Restoration and Restoration of Modified Dunes, shall:

1. Ensure that the \$1,315,000 allocated toward these projects, plus interest thereon, is placed in the McGrath Lake Trust;
2. Ensure that the Lake Restoration and Habitat Restoration Projects including Riparian Restoration and Restoration of Modified Dunes or any other use of funds segregated for these projects, comply with all applicable laws, including the National environmental Policy Act (NEPA) (42 U.S.C.A. §§ 4321 et seq.), the Endangered Species Act (ESA) (16 U.S.C. § 1531 et seq.), the Coastal Zone Management Act (CZMA) (16 U.S.C. § 1451 et seq.), and the California Environmental Quality Act (CEQA) (Pub. Resources Code §§ 21000 et seq.).
3. Provide for the NRT Council's approval a detailed statement of the proposed projects, project schedules, estimated budgets for the life of the projects, including an estimate of any contract, administrative, or overhead costs to be charged to the projects;
4. Obtain the NRT Council's authorization to commence the Lake Restoration and Habitat Restoration Projects including Riparian Restoration and Restoration of Modified Dunes;
5. Following approval of the NRT Council, direct disbursement of funds from the McGrath Lake Trust to pay costs incurred in connection with the Lake Restoration and Habitat Restoration Projects including Riparian Restoration and Restoration of Modified Dunes;
6. Oversee, coordinate, and monitor the progress of the Lake Restoration and Habitat Restoration Projects including Riparian Restoration and Restoration of Modified Dunes;
7. Submit quarterly reports to the NRT Council which shall include a progress report and an estimate of funds spent;
8. Establish and maintain records and relevant documents regarding the Lake Restoration and Habitat Restoration Projects including Riparian Restoration and Restoration of Modified Dunes;
9. Schedule meetings and prepare an agenda for the NRT Council meetings regarding the Lake Restoration and Habitat Restoration Projects including Riparian Restoration and Restoration of Modified Dunes;
10. Inform the other Trustees of all pertinent developments regarding the projects on a timely basis; and
11. Carry out such other duties as directed by the NRT Council.

C. Lead Administrative Trustee

The Lead Administrative Trustee shall be the DPR. The duties of the NRT Council primary representative of the DPR or that representative's designee, on behalf of the Lead Administrative Trustee, shall include, but are not limited to:

1. Coordinating and monitoring all aspects of the Natural Resource Restoration process not specifically addressed above;

2. Scheduling meetings and preparing an agenda for the NRT Council general meetings;
3. Acting as a central contact point for the NRT Council;
4. Establishing and maintaining records and relevant documents other than those regarding specific Restoration projects; and
5. Carrying out such other duties as directed by the NRT Council.

The Lead Administrative Trustee may delegate any of its duties to another Trustee with the concurrence of the NRT Council.

X. CONFIDENTIALITY

The Trustees agree that it is generally in the public interest that scientific data arising out of their review of the injury to Natural Resources caused by the Oil Spill be made public. Therefore, such data shall be made public if publication will not prejudice assessment or recovery efforts in this or other legal actions. Wherever possible, public sharing of scientific data will be the general policy of the Trustees. However, all parties to this MOU recognize that oral and written communications that are privileged attorney-client communications, attorney work product, or protected by other applicable privileges (or a combination thereof) ("Privileged Communications") will be protected from disclosure to the maximum extent possible under applicable Federal and State law.

The parties to this MOU further agree that whenever a request for production of any written communication is received pursuant to any applicable Federal or State law, the request will be forwarded for response to the Trustee to which any privilege applies or whose representatives originally generated or contributed the record requested. Nothing contained herein shall be construed as prohibiting or restraining a Trustee or the NRT Council from agreeing to release any record. Nothing contained herein shall be construed as requiring a Trustee or the NRT Council to release any record.

XI. RESERVATION OF RIGHTS

Nothing in this MOU is to imply that any signatory government is in any way abrogating or ceding any responsibility or authority inherent in its control or trusteeship over Natural Resources.

XII. LIMITATION

Nothing in this MOU shall be construed as obligating the United States, the State of California or any other public agency, their officers, agents or employees, to expend any funds in excess of the funds deposited into the McGrath Lake Trust and/or appropriations authorized by law.

XIII. THIRD-PARTY CHALLENGES OR APPEALS

Nothing in this MOU may be the basis of any third-party challenges or appeals. Nothing in this MOU creates any rights or causes of action in persons not parties to this MOU.

XIV. MODIFICATION OF AGREEMENT

Modification of this MOU must be in writing and approved by the Trustees currently parties to this MOU.

XV. TERMINATION

This MOU shall be in effect from the date of execution until termination by agreement of the Trustees. If at any time the trustees determine that the purposes set forth in this MOU have been satisfied, the MOU may be terminated. In the event a Trustee withdraws from the MOU, such withdrawal must be in writing and provided to the other parties to this MOU at least thirty (30) days in advance of the withdrawal.

In the event of the withdrawal of a Trustee and/or the termination of this MOU, the NRT Council shall request a full and complete accounting from the National Fish and Wildlife Foundation of all restoration funds received, deposited, held disbursed, managed, expended, or otherwise controlled by the trustee for the McGrath Lake Trust.


XVI. EXECUTION: EFFECTIVE DATE

This MOU may be executed in counterparts. A copy with all original executed signature pages affixed shall constitute the original MOU and be retained by the Lead Administrative Trustee. The date of execution shall be the date of the signature of the last Trustee to sign the MOU.

SIGNATURES:

Dated: 5/5/97, 1997

UNITED STATES FISH AND WILDLIFE SERVICE

By: 
for MICHAEL J. SPEAR
Regional Director
Region One

Dated: 21 March, 1997

CALIFORNIA DEPARTMENT OF FISH AND GAME

By: Pete Bontadelli
PETE BONTADELLI
Administrator
Office of Oil Spill Prevention and Response

Dated: 4/14/97, 1997

CALIFORNIA DEPARTMENT OF PARKS AND
RECREATION

By: Donald W. Murphy
DONALD W. MURPHY
Director

KVS:mld

FILE: ExFile, OSPR, OSPR-RF, Chron, Subject File